



# **CITY COUNCIL**

## **Meeting Agenda**

**REGULAR MEETING  
COUNCIL CHAMBERS**

**MONDAY, MAY 14, 2007  
7:00 P.M.**

### **OPENING MATTERS**

**CALL TO ORDER**

**INVOCATION:** Rev. Nicholas Camacho, Emmanuel UM Church

**PLEDGE OF ALLEGIANCE**

**ROLL CALL**

### **PROCLAMATIONS AND PRESENTATIONS**

**Council Commendations:**

Recognizing Anti-Gun Violence Initiatives

**Mayoral Proclamations:**

Recognizing Public Works Week: accepted by Charles Jones, Public Works Director

### **PUBLIC COMMENT – AGENDA MATTERS:**

*Citizens have the opportunity to address the Council, by registering with the City Clerk before the start of the meeting. All remarks must be directed to Council as a body and not to any individual Council member or public or elected official in attendance. Any person making personally offensive or impertinent remarks or who shall become unruly while addressing Council may be called to order by the Presiding Officer, and may be barred from speaking before Council, unless permission to continue speaking is granted by the majority vote of Council.*

*All comments by the public shall be made from the speaker's podium. Citizens attending the meeting may not cross into the area beyond the podium. Any materials to be distributed to Council must be given to the City Clerk before the meeting is called to order. Those commenting on an agenda business shall speak at the beginning of the*

meeting and shall limit their remarks to 5 minutes. Those commenting on general matters shall speak after the legislative business is concluded and shall limit their remarks to 3 minutes.

*No comments shall be made from any other location except the podium, and anyone making "out of order" comments may be subject to removal. There will be no demonstration at the conclusion of anyone's presentation. Citizens may not ask questions of Council member or other elected or public official in attendance.*

## **APPROVAL OF AGENDA AND MINUTES**

2. **AGENDA:** Council Meeting of May 14, 2007.

3. **MINUTES:** Council Meetings of April 23, 2007

## **4. CONSENT AGENDA**

**Resolution-** upgrading street lights in front of 126 Plum Street, 1451 Centre Avenue and 1619 Centre Avenue. **(Traffic Engineering)**

**Resolution-** directing Met-Ed Energy to upgrade a company owned street light fixture, from a 175 watt mercury vapor to a 100 watt high pressure sodium vapor, located in front of 729 Miltmore Street. **(Traffic Engineering)**

**Resolution-** directing Met-Ed Energy to upgrade a company owned street light fixture, from a 250 watt mercury vapor to a 150 watt high pressure sodium vapor, located at the intersection of Front and Spring Streets. **(Traffic Engineering)**

**Resolution-** authorizing the Mayor to file an application for RACP funds in the amount of \$500,000.00 for the redevelopment of the Upland Center located at Alvernia College. **(Community Development)**

**Resolution-** urging Congress to adopt the Employee Free Choice Act.

**Resolution-** authorizing the abandonment of a City owned waterline which services Carpenter Technology. **(Solicitor)**

**Award of Contract-** Shannon Chemical Corp., P.O. Box 376, Malvern, PA 19355, who is the low bidder, at a price of \$2.57/gallon for approximately 20,000 gallons of Sodium Phosphate. **(Purchasing)**

**Award of Contract-** to Delta Chemical Corp., 2601 Cannery Avenue, Baltimore, MD 21226-1595, who is the low bidder, at a price of \$231.93/dry ton for approximately 1,500 dry tons of Aluminum Sulfate. **(Purchasing)**

**Award of Contract-** to Talucci Contractors, 1423 Gallagherville Road, Downingtown, PA 19335, who is the lowest responsible bidder, at a bid price of \$214,000.00, for the resurfacing of Schlegel Pool. **(Purchasing)**

## **5. ADMINISTRATIVE REPORTS**

## **6. FINANCE REPORT**

## **7. REPORT FROM OFFICE OF THE AUDITOR**

## **8. REPORTS FROM DIRECTORS & BOARDS AUTHORITIES AND COMMISSIONS**

## **9. ORDINANCES FOR FINAL PASSAGE**

### **Tabled Pending Further Discussion**

**Bill No. 16-** amending the City of Reading Codified Ordinances by regulating advertisements for the sale of real estate in the City of Reading. **(Waltman/Goodman-Hinnershitz)** *Introduced and tabled at the 03/12/07 meeting of Council.*

**Bill No. 22-** amending Chapter 20, Part 1 Solid Waste, of the City of Reading Codified Ordinances. **(Managing Director)** *Introduced at the 03/12/07 meeting of Council; tabled at the 03/26/07 and 04/09/07 meeting of Council; discussed at the 04/16/07 Work Session.*

**Bill No. 27-** authorizing the Mayor to enter into agreement terminating the Clinton F. Earl Trust. **(Managing Director/Solicitor)** *Introduced at the 03/26/07 meeting of Council; tabled at the 04/09/07 meeting of Council.*

**Bill No. 28-** amending Chapter 11, Housing, of the City of Reading Codified Ordinances. **(Managing Director/Solicitor)** *Introduced at the 03/12/07 meeting of Council; tabled at the 03/26/07 meeting of Council*

**Bill No. 31-** amending the City of Reading Codified Ordinances, by amending Chapter 11 Housing, Part 1 Rental Occupancy Permits, Section 102 Definitions and Section 103 Permits Required. **(Spencer)** *Introduced at the 04/09/07 meeting of Council; discussed during*

**Bill No. 21-** amending the City of Reading Capital Improvements Plan, by substituting new projects for deleted existing projects. **(Managing Director)** *Introduced at the 03/12/07 meeting of Council; tabled at the 03/26/07*

***meeting of Council; tabled pending further discussion at the 04/30/07 Committee of the Whole***

**Bill No. 24-** amending the City of Reading Codified Ordinances by adding a new part dealing with initiative and referendum. **(Council Staff & City Solicitor)**  
***Introduced at the 03/12/07 meeting of Council; tabled at the 04/09/07 meeting of Council pending further discussion at the 04/30/07 Committee of the Whole.***

**Bill No. 23-** amending Chapter 20 Solid Waste, Section 2 Dumpster Placement, of the City of Reading Codified Ordinances. **(Solicitor)** ***Introduced at the 03/12/07 meeting of Council; tabled at the 04/09/07 meeting of Council.***

**Bill No. 30-** codifying the City of Reading Food Code. **(Solicitor)**

**Bill No. 32-** conveying the premises situate at 328 Mulberry Street to Our City Reading. **(Solicitor)** ***Introduced at the 04/23/07 meeting of Council.***

**Bill No. 33-** amending the City of Reading Codified Ordinances by adding Part 16 Sidewalk Sales to Chapter 10 Health and Safety. **(Council Staff)** ***Recommended by the Public Safety Committee; introduced at the 04/09/07 meeting of Council; tabled at the 04/23/07 meeting of Council.***

**Bill No. 34-** an Ordinance amending the City of Reading Codified Ordinances by adding Part 15 Sidewalk Cafes to Chapter 10 Health and Safety. **(Council Staff)** ***Recommended by the Public Safety Committee, introduced at the 04/09/07 meeting of Council; tabled at the 04/23/07 meeting of Council.***

**Bill No. 35-** amending Chapter 6 Conduct, Part 1 Alcoholic Beverages by establishing rules and regulations for bottle clubs. **(Council Staff, Legislative Aide Committee, Chief of Police)** ***Recommended by the Public Safety Committee***

## **10. INTRODUCTION OF NEW ORDINANCES**

**Ordinance-** authorizing the Mayor to renew the lease between the City of Reading and the Berks County Chapter of the Izaak Walton League of America. The agreement shall be renewed for a period of 25 years. **(Council Staff)**

**Ordinance-** amending the Codified Ordinances of the City of Reading, Chapter 6, Section 6-122, by bringing the section into compliance with the Bottle Club Ordinance. **(Council Staff)**

**Ordinance-** increasing the salary of Charles D. Younger, City Solicitor to \$66,150.00, which reflects a 5% increase. **(Managing Director)**

**Ordinance-** amending the Codified Ordinances Chapter 11, Part 1, Section 11-102. Permit required; Application; Fees and Exemptions by changing the mailing date, submittal date and effective date of the Rental Occupancy Permit Applications for the 2007 Calendar Year. **(Solicitor/Council Staff)**

**Ordinance-** conveying, for \$1,000.00, a parcel known as the Chester Street Lot to Mr. John Weidner. **(Public Works Committee/Council Staff)**

**Ordinance-** authorized to execute the "Landowner-Grantee Agreement" between the City of Reading and the RiverPlace Development Corporation and/or the PA Department of Environmental Protection for the establishment and maintenance, etc. of solar-powered lighting along the Schuylkill River and Wyomissing Creek Trails. **(Public Works/Solicitor)**

## 11. RESOLUTIONS

**Resolution-** Reprogramming \$950,000.00 in CDBG funds for the purchase of two fire trucks. **(Community Development)**

**Resolution-** to approve/deny a Certificate of Appropriateness for the installation of a wrought iron security gate at the entrance way and wrought iron security bars on the front windows of 422 Penn Street. **(Council Staff)**

**Resolution-** authorizing the Reading Area Water Authority to incur indebtedness in the amount of \$25,000,000.00, for the expansion and improvement of the system. **(Water Authority)**

**Resolution-** appointing Keith Singleton to the Minority Business Procurement Board. **(Administrative Oversight)**

**Resolution-** appointing Michael Rivera to the Minority Business Procurement Board. **(Administrative Oversight)**

**Resolution-** reappointing Eligio Colon Jr. to the Reading Area Housing Authority. **(Administrative Oversight)**

**Resolution-** reappointing Earl Kegerise to the Plumbing Board of Examiners. **(Administrative Oversight)**

**Resolution-** reappointing John Darlington to the Reading Area Parking Authority.  
**(Administrative Oversight)**

**Resolution-** appointing Lee Olson to the Blighted Property Review Committee.

**PUBLIC COMMENT - GENERAL MATTERS**  
**COUNCIL BUSINESS / COMMENTS**

**COUNCIL MEETING SCHEDULE**

*Committee of the Whole-Mon, May 14<sup>th</sup>, Council Offices 5:00p.m.*  
*Regular Meeting-Mon, May 14<sup>th</sup>, Council Chambers 7:00p.m.*

*Public Safety Committee-Mon, May 21<sup>st</sup>, Council Office 5:00p.m.*  
*Public Works Committee-Mon, May 21<sup>st</sup>, Council Office 5:00p.m.*  
*Work Session-Mon, May 21<sup>st</sup>, Penn Room 7:00p.m.*

*Council Meeting with the Mayor- Wed, May 23<sup>rd</sup>, Mayor's Office 4:00p.m.*  
*Liquor License Transfer Hearing- Wed, May 23<sup>rd</sup>, Council Chambers 5:00p.m.*  
*Tax Exoneration Hearing- Wed, May 23<sup>rd</sup>, Council Chambers 6:00p.m.*

*Committee of the Whole-Mon, April 9<sup>th</sup>, Council Offices 5:00p.m.*  
*Regular Meeting-Mon, April 9<sup>th</sup>, Council Chambers 7:00p.m.*

# AGENDA MEMO

**TO:** City Council  
**PREPARED BY:** John Giardiello  
**MEETING DATE:** May 14, 2007  
**AGENDA MEMO DATE:** April 18, 2007  
**REQUESTED ACTION:** Council approve a resolution directing Met-Ed Energy to upgrade three company owned street light fixtures.

## **RECOMMENDATION:**

The Administration recommends Council approve a resolution directing Met-Ed Energy to upgrade three company owned street light fixtures.

- Pole #50859-36929, in front of 126 Plum St, from 175-watt mercury vapor to 100-watt high pressure sodium.
- Pole #50605-37841, in front of 1451 Centre Ave, from 400-watt mercury vapor to 250-watt high pressure sodium.
- Pole #50616-37922, in front of 1619 Centre Ave, from 400-watt mercury vapor to 250-watt high pressure sodium.

## **BACKGROUND:**

Requested by Traffic Planner.

## **BUDGETARY IMPACT:**

The cost to supply energy to these fixtures is \$0.90 less per month/fixture.

**PREVIOUS ACTION:**

None

**SUBSEQUENT ACTION:**

None

**RECOMMENDED BY:**

Traffic Planner, Public Works Director, Managing Director and Mayor.

**RECOMMENDED MOTION:**

Approve the request to direct Met-Ed Energy to upgrade three company owned street light fixtures.



CITY OF READING

RESOLUTION NO. \_\_\_\_\_

FOR ADDITIONAL STREET LIGHTS

WHEREAS, a contract was entered into by the City of Reading and Metropolitan Edison Company, (hereinafter Met-Ed), whereby said Company shall furnish lighting; and

WHEREAS, it is necessary and proper that additional lighting should be installed and maintained for the service, accommodation, convenience and safety of the public;

NOW, THEREFORE, BE IT RESOLVED, that the City of Reading pursuant to the provisions and terms of the Company's applicable Rate Schedules and Riders, and the rules and regulations now on file and such rules and regulations, Rate Schedules and Riders hereafter filed from time to time and in effect with the Pennsylvania Public Utility Commission (hereinafter Tariff), do hereby repeal and replace Resolution 37-2006 and order and direct Met-Ed to furnish additional lighting consisting of:

- a. Upgrade one (1) existing, Company owned, 175-watt, mercury vapor, cobrahead, to a 100-watt, high-pressure sodium vapor, luminaire on pole 50859-36929 in front of 126 Plum Street.
- b. Upgrade one (1) existing, Company owned, 400-watt, mercury vapor, cobrahead, streetlight to a 250-watt, high-pressure sodium vapor, luminaire on pole 50605-37841 in front of 1451 Centre Avenue.
- c. Upgrade one (1) existing, Company owned, 400-watt, mercury vapor, cobrahead, streetlight to a 250-watt, high pressure sodium vapor, luminaire on pole 50616-37922 in front of 1619 Centre Avenue.

Payment to be made to Metropolitan Edison Company for the additional lighting at the rates specified in the Tariff.

Resolution adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

By: \_\_\_\_\_  
President of Council

Attest:

\_\_\_\_\_  
City Clerk

I, \_\_\_\_\_, City Clerk of the City of Reading, do hereby certify that the above and foregoing is a true and correct copy of a resolution adopted by the City at a meeting of said City duly called and held on the \_\_\_\_\_ day of \_\_\_\_\_, 2007.

Witness my hand and the seal of said City this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

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City Clerk

# AGENDA MEMO

**TO:** City Council  
**PREPARED BY:** John Giardiello  
**MEETING DATE:** May 14, 2007  
**AGENDA MEMO DATE:** April 18, 2007  
**REQUESTED ACTION:** Council approve a resolution directing Met-Ed Energy to upgrade one company owned street light fixture.

## **RECOMMENDATION:**

The Administration recommends Council approve a resolution directing Met-Ed Energy to upgrade a company owned street light fixture, from a 175 watt mercury vapor to a 100 watt high pressure sodium vapor.

- Pole #50386-37433, in front of 729 Miltimore Street.

## **BACKGROUND:**

Requested by Traffic Planner.

## **BUDGETARY IMPACT:**

The cost to supply energy to this fixture is \$0.90 less per month.

## **PREVIOUS ACTION:**

None

## **SUBSEQUENT ACTION:**

None

**RECOMMENDED BY:**

Traffic Planner, Public Works Director, Managing Director and Mayor.

**RECOMMENDED MOTION:**

Approve the request to direct Met-Ed Energy to upgrade one company owned street light fixture.

CITY OF READING

RESOLUTION NO. \_\_\_\_\_

FOR ADDITIONAL STREET LIGHTS

WHEREAS, a contract was entered into by the City of Reading and Metropolitan Edison Company, (hereinafter Met-Ed), whereby said Company shall furnish lighting; and

WHEREAS, it is necessary and proper that additional lighting should be installed and maintained for the service, accommodation, convenience and safety of the public;

NOW, THEREFORE, BE IT RESOLVED, that the City of Reading pursuant to the provisions and terms of the Company's applicable Rate Schedules and Riders, and the rules and regulations now on file and such rules and regulations, Rate Schedules and Riders hereafter filed from time to time and in effect with the Pennsylvania Public Utility Commission (hereinafter Tariff), do hereby repeal and replace Resolution 37-2006 and order and direct Met-Ed to furnish additional lighting consisting of:

Upgrade one (1) existing, Company owned, 175-watt, mercury vapor, cobrahead, streetlight to a 100-watt, high-pressure sodium vapor, luminaire on pole 50386-37433 in front of 729 Miltimore Street within the City. Met-Ed will continue to provide energy and total maintenance to this streetlight.

Payment to be made to Metropolitan Edison Company for the additional lighting at the rates specified in the Tariff.

Resolution adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

By: \_\_\_\_\_  
President of Council

Attest:

\_\_\_\_\_  
City Clerk

I, \_\_\_\_\_, City Clerk of the City of Reading, do hereby certify that the above and foregoing is a true and correct copy of a resolution adopted by the City at a meeting of said City duly called and held on the \_\_\_\_\_ day of \_\_\_\_\_, 2007.

Witness my hand and the seal of said City this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

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City Clerk

# AGENDA MEMO

**TO:** City Council  
**PREPARED BY:** John Giardiello  
**MEETING DATE:** May 14, 2007  
**AGENDA MEMO DATE:** April 18, 2007  
**REQUESTED ACTION:** Council approve a resolution directing Met-Ed Energy to upgrade one company owned street light fixture.

## **RECOMMENDATION:**

The Administration recommends Council approve a resolution directing Met-Ed Energy to upgrade a company owned street light fixture, from a 250 watt mercury vapor to a 150 watt high pressure sodium vapor.

- Pole #50568-37571, at the intersection of Front and Spring Sts.

## **BACKGROUND:**

Requested by Traffic Planner.

## **BUDGETARY IMPACT:**

The cost to supply energy to this fixture is \$0.90 less per month.

## **PREVIOUS ACTION:**

None

## **SUBSEQUENT ACTION:**

None

**RECOMMENDED BY:**

Traffic Planner, Public Works Director, Managing Director and Mayor.

**RECOMMENDED MOTION:**

Approve the request to direct Met-Ed Energy to upgrade one company owned street light fixture.



RESOLUTION NO. \_\_\_\_\_

FOR ADDITIONAL STREET LIGHTS

WHEREAS, a contract was entered into by the City of Reading and Metropolitan Edison Company, (hereinafter Met-Ed), whereby said Company shall furnish lighting; and

WHEREAS, it is necessary and proper that additional lighting should be installed and maintained for the service, accommodation, convenience and safety of the public;

NOW, THEREFORE, BE IT RESOLVED, that the City of Reading pursuant to the provisions and terms of the Company's applicable Rate Schedules and Riders, and the rules and regulations now on file and such rules and regulations, Rate Schedules and Riders hereafter filed from time to time and in effect with the Pennsylvania Public Utility Commission (hereinafter Tariff), do hereby repeal and replace Resolution 37-2006 and order and direct Met-Ed to furnish additional lighting consisting of:

Upgrade one (1) existing, Company owned, 250-watt, mercury vapor, cobrahead, streetlight to a 150-watt, high-pressure sodium vapor, luminaire on pole 50568-37571 at the intersection of Spring and Front Streets within the City . Met-Ed will continue to provide energy and total maintenance to this streetlight.

Payment to be made to Metropolitan Edison Company for the additional lighting at the rates specified in the Tariff.

Resolution adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

By: \_\_\_\_\_  
President of Council

Attest:

\_\_\_\_\_  
City Clerk

I, \_\_\_\_\_, City Clerk of the City of Reading, do hereby certify that the above and foregoing is a true and correct copy of a resolution adopted by the City at a meeting of said City duly called and held on the \_\_\_\_\_ day of \_\_\_\_\_, 2007.

Witness my hand and the seal of said City this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

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City Clerk

**RESOLUTION \_\_\_\_\_-2007**

## **CITY OF READING CITY COUNCIL**

WHEREAS, the Pennsylvania Capital Facilities Debt Enabling Act authorizes funding for eligible economic development capital projects through the Redevelopment Assistance Capital Program ("RACP"); and

WHEREAS, the City of Reading has identified the acquisition and redevelopment of the Upland Center on the campus of Alvernia College as a project eligible for such assistance (the "Project"); and

WHEREAS, the Project will provide employment opportunities, promote economic development in the City of Reading and have a regional, multi-jurisdictional impact through the enhancement of Alvernia College's campus.

NOW THEREFORE BE IT RESOLVED, that the Mayor is authorized to file an application for RACP funds in the amount of \$500,000.00 for the Alvernia College. The Mayor is further authorized to execute any and all necessary documents as required by the Commonwealth of Pennsylvania.

Adopted on \_\_\_\_\_, 2007

\_\_\_\_\_  
Vaughn D. Spencer  
President of Council

ATTEST:

\_\_\_\_\_  
Linda A. Kelleher  
City Clerk

**COOPERATIVE ECONOMIC REDEVELOPMENT AGREEMENT**

**THIS AGREEMENT**, made this \_\_\_\_\_ day of \_\_\_\_\_, 2007, by and between the CITY OF READING (referred to as "City"), a Pennsylvania municipal corporation with its main office at 815 Washington St., Reading, PA 19601, and ALVERNIA COLLEGE (referred to as "Alvernia"), a Pennsylvania non-profit corporation with its main office at 400 Saint Bernardine Street, Reading, PA 19607-1799.

**BACKGROUND**

A. The City has expressed its desire to facilitate the acquisition and redevelopment of the Maier Building (Upland Center) on the campus of Alvernia, 400 Saint Bernardine Street, Reading, Berks County, Pennsylvania (referred to as "Project").

B. The City has passed Resolution \_\_\_\_-2007, a copy of which is attached hereto as Exhibit "A", authorizing the Mayor of the City to obtain various funding for said Project and also authorizing him to execute all necessary documents and agreements to complete said Project.

C. In accordance with its Bylaws, Alvernia's Executive Committee has passed a Resolution authorizing Alvernia to apply, through the City, for a RACP grant and also authorizing the Vice President of Alvernia to execute all necessary documents and agreements to complete the project. A copy of said Resolution is attached hereto and incorporated herein as Exhibit "B."

D. The Project will provide employment opportunities in the City, promote economic development in the City and have a regional, multi-jurisdictional impact through the advancement of Alvernia's campus.

E. The City through its Mayor has specifically applied for a RACP grant in the amount of Five Hundred Thousand Dollars (\$500,000) for the Project with Alvernia

as subgrantee.

F. The City has executed a RACP Grant Agreement for the Project (Contract No. ME \_\_\_\_\_) (referred to as "Grant Agreement"), a copy of which is attached hereto as Exhibit "C".

G. The Grant Agreement requires the City and Alvernia to enter into a Cooperative Economic Redevelopment Agreement.

NOW, THEREFORE, INTENDING TO BE LEGALLY BOUND, the parties agree as follows:

1. The Background Clauses set forth above are incorporated herein by reference.

2. The City and Alvernia shall use their best efforts to achieve completion of the Project, execute any necessary documents related thereto and shall comply with any and all RACP terms and conditions of the Grant Agreement and the Redevelopment Assistance Program.

3. This Agreement shall not be recorded by either party.

IN WITNESS WHEREOF, the parties intending to be legally bound hereby set their hands and seals on the day and year first above written.

CITY OF READING

By: \_\_\_\_\_  
Thomas M. McMahon, Mayor

Attest:

\_\_\_\_\_  
Linda A. Kelleher, City Clerk

ALVERNIA COLLEGE

By: \_\_\_\_\_  
Douglas F. Smith, Vice President

Resolution No. \_\_\_\_2007

**WHEREAS**, in 1935, the United States established, by law, that workers must be free to form unions; and

**WHEREAS**, the freedom to form or join a union is internationally recognized by the 1948 Universal Declaration of Human Rights as a fundamental human right; and

**WHEREAS**, the free choice to join with others and bargain for better wages and benefits

is essential to economic opportunity and good living standards; and

**WHEREAS**, unions benefit communities by strengthening living standards, stabilizing tax bases, promoting equal treatment and enhancing civic participation; and

**WHEREAS**, states in which more people are union members are states with higher wages, better benefits and better schools; and

**WHEREAS**, union workers receive better wages and benefits, with union workers earning 29 percent more than workers without a union, 35 percent more likely to have access to health insurance, and are four times more likely to have access to a guaranteed defined-benefit pension; and

**WHEREAS**, unions help raise workers' pay and narrow the income gap for minorities and women, by increasing median weekly earnings by 31 percent for union women workers, 31 percent for African-American workers, 50 percent for Latino workers, 9 percent for Asian American workers; and

**WHEREAS**, workers across the nation are routinely denied the freedom to form unions and bargain for a better life, with 25 percent of private-sector employers illegally firing at least one worker for union activity during organizing campaigns; and

**WHEREAS**, 77 percent of the public believes it is important to have strong laws protecting the freedom for workers to make their own decision about having a union, and 58 percent of workers would join a union if they had the chance; and

**WHEREAS**, employers often refuse to bargain fairly with workers after forming a union by dragging out first contract bargaining for up to two years in 45 percent of successful campaigns; and

**WHEREAS**, each year millions of dollars are spent to frustrate workers' efforts to form unions, and most violations of workers' freedom to choose a union occur behind closed doors, with 78 percent of employers forcing employees to attend mandatory anti-union meetings; and

**WHEREAS**, when the right of workers to form a union is violated, wages fall, race and gender pay gaps widen, workplace discrimination increases and job safety standards disappear; and

**WHEREAS**, a worker's fundamental right to choose a union free from coercion and\ intimidation is a public issue that requires public policy solutions, including legislative\ remedies; and

**WHEREAS**, the Employee Free Choice Act has been introduced in the U.S. Congress In order to restore workers' freedom to join a union;

**WHEREAS**, The Employee Free Choice Act will safeguard workers' ability to make their own decisions with these abuses, provide for first contract mediation and arbitration, and establish meaningful penalties when employers violate workers' rights.

**THEREFORE, BE IT RESOLVED** that the City of Reading City Council supports the Employee Free Choice Act which would authorize the National Labor Relations Board To certify a union as the bargaining representative when a majority of employees Voluntarily sign authorizations designating that union to represent them; provide for first Contract mediation and arbitration; and establish meaningful penalties for violations of a worker's freedom to choose a union.

**THEREFORE, BE IT RESOLVED/PROCLAIMED** that we urge Congress to pass the Employee Free Choice Act to protect and preserve for America's workers their freedom to choose for themselves whether or not to form a union.

Adopted on \_\_\_\_\_2007

\_\_\_\_\_  
Vaughn D. Spencer  
President of Council

ATTEST:

\_\_\_\_\_  
Linda A. Kelleher, City Clerk

RESOLUTION NO. \_\_\_\_\_

AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT WITH CARPENTER TECHNOLOGY CORPORATION WHICH WILL PROVIDE FOR THE ABANDONMENT OF A CITY OWNED WATERLINE WHICH SERVICES CARPENTER TECHNOLOGY CORPORATION UPON CARPENTER TECHNOLOGY CORPORATION'S CONSTRUCTION AND DEDICATION OF A RELOCATED WATERLINE CAPABLE OF SERVING THE SAME PURPOSE.

WHEREAS, Carpenter Technology Corporation (hereinafter "Cartech") desires to expand Building 108 located along Front Street in the City of Reading; and

WHEREAS, in order to expand said building, Cartech must relocate the city owned waterline which runs through the proposed expansion area; and

WHEREAS, the City of Reading desires to facilitate the expansion of Cartech's Building 108.

NOW, THEREFORE, THE COUNCIL OF THE CITY OF READING HEREBY RESOLVES AS FOLLOWS:

That the Mayor be and he is hereby authorized and directed to execute, under the seal of the City of Reading, attested to by the City Clerk, an agreement with Carpenter Technology Corporation, said agreement providing the terms and conditions by which the city will abandon the current waterline as depicted on Exhibit "A" to the Agreement. Furthermore, said Agreement between the City of Reading and Carpenter Technology is attached hereto as Exhibit "A".

Passed Council \_\_\_\_\_, 2007

\_\_\_\_\_  
President of Council

Attest:

\_\_\_\_\_  
City Clerk



## AGREEMENT

THIS AGREEMENT made this \_\_\_\_ day of \_\_\_\_\_, 2007, by and between the CITY OF READING, a Third Class City of the Commonwealth of Pennsylvania, having an address of 815 Washington Street, Reading, Berks County, Pennsylvania (hereinafter "City"),

AND

CARPENTER TECHNOLOGY CORPORATION, a Delaware corporation, having an address of 1100 Schuylkill Avenue, Reading, Berks County, Pennsylvania (hereinafter "Cartech").

WHEREAS, the City currently owns and leases to the Reading Area Water Authority (hereinafter "RAWA") a twelve inch waterline and appurtenant facilities which service portions of Cartech's facilities as shown on the Plan of Carpenter Technology for Building 108 Expansion attached hereto as Exhibit "A"; and

WHEREAS, Cartech is designing and intends to construct a new twelve inch waterline which will service its property and allow for the expansion of Building 108 in an area currently occupied by the City's current waterline; and

WHEREAS, subject to obtaining all the necessary land development approvals for the Building 108 expansion and relocation of the twelve inch waterline, and the terms and conditions contained herein, the City agrees to abandon the certain twelve inch waterline and appurtenant facilities as set forth on Exhibit "A" upon the dedication by Cartech to RAWA of a certain newly constructed twelve inch waterline and appurtenances to replace the line which shall be abandoned.

Pending the necessary approvals by the City of Reading Planning Commission of the land development plan submitted to the City of Reading Planning Commission by Cartech, Cartech hereby agrees, at its sole cost and expense, to relocate and construct a twelve inch waterline so as to allow expanded Cartech Building 108 to occupy an area of land which the City's current waterline is situated under. Attached hereto as a part of Exhibit "A" is a description of the new location of the twelve inch waterline. Cartech agrees that the relocation and construction of the relocated twelve inch waterline will be at the sole cost and expense of Cartech and that the relocated newly constructed twelve inch waterline will be designed and constructed in accordance with current RAWA design and construction specifications. Cartech further agrees that RAWA shall be permitted to make periodic inspections during the process of relocating and constructing the new twelve inch waterline so as to ensure compliance by Cartech with the aforesaid twelve inch waterline construction specifications. It is further agreed that the City nor RAWA shall be required to contribute any funds for the purpose of relocating or constructing the new twelve inch waterline.

Upon completion of the relocated twelve inch waterline and subject to satisfactory inspection and approval by RAWA and dedication of the same to RAWA by Cartech, so as to make the relocated twelve inch waterline a part of the City of Reading water system, leased and operated by RAWA, and upon acceptance of the dedication of the relocated twelve inch waterline by RAWA, the City hereby agrees to abandon and vacate the existing twelve inch waterline as depicted on Exhibit "A".

This Agreement is subject to approval by the City Council of the City of Reading and by the appropriate officials of Carpenter Technology Corporation. This Agreement shall be

interpreted in accordance with Pennsylvania laws.

This Agreement contains the final and entire agreement between the parties and they shall not be bound by any terms, conditions, statements or representations, oral or written, not contained herein. All understandings and agreements heretofore made between the parties are merged in this Agreement. Which alone fully and completely expresses the agreement of the parties and which may not be changed, modified or terminated except by a written instrument signed by the parties.

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Any party to this Agreement may deliver an executed copy of this Agreement by facsimile transmission to the other party and any such delivery shall have the same force and effect as any other delivery of a manually signed copy of this Agreement.

IN WITNESS WHEREOF, this Agreement is duly executed by the parties, intending to be legally bound, effective as of the day and year first above written.

CITY OF READING

By:

---

Name:

Title: Mayor

Attest:

---

CARPENTER TECHNOLOGY  
CORPORATION, a Delaware  
corporation

By:

---

Name:

Title:

Attest:

---



# AGENDA MEMO

## FINANCE DEPARTMENT

**TO:** City Council  
**FROM:** Heather Dunkle, Purchasing Coordinator  
**PREPARED BY:** Heather Dunkle, Purchasing Coordinator  
**MEETING DATE:** May 14, 2007  
**AGENDA MEMO DATE:** May 8, 2007  
**RECOMMENDED ACTION:** Awarding of Contract for Sodium Phosphate for the City of Reading, on behalf of the Reading Area Water Authority.

### RECOMMENDATION

The recommendation is to award the contract to Shannon Chemical Corp., P.O. Box 376, Malvern, PA 19355, who is the low bidder, at a price of \$2.57/gallon for approximately 20,000 gallons, for a total bid of \$51,400.00.

### BACKGROUND

Bids for approximately 20,000 gallons of Sodium Phosphate for use by the Reading Area Water Authority were received March 23, 2007.

A copy of the Schedule of Bids is attached for your review.

### BUDGETARY IMPACT

The Water Authority has confirmed there are sufficient funds in budget account code 50-15-84-4513 with \$69,933.85 remaining after the contract funds are encumbered.

### PREVIOUS ACTION

None.

### SUBSEQUENT ACTION

Formal action by Council is needed to award the contract at the May 14, 2007 meeting.

### RECOMMENDED BY

Mayor, Managing Director, Reading Area Water Authority Executive Director, Finance Director, and Purchasing Coordinator.

**RECOMMENDED MOTION**

Approve/Deny the recommendation to award the contract to Shannon Chemical Corp. for the purchase of Sodium Phosphate.



# AGENDA MEMO

## FINANCE DEPARTMENT

**TO:** City Council  
**FROM:** Heather Dunkle, Purchasing Coordinator  
**PREPARED BY:** Heather Dunkle, Purchasing Coordinator  
**MEETING DATE:** May 14, 2007  
**AGENDA MEMO DATE:** May 8, 2007  
**RECOMMENDED ACTION:** Awarding of Contract for Aluminum Sulfate for the City of Reading, on behalf of the Reading Area Water Authority.

### RECOMMENDATION

The recommendation is to award the contract to Delta Chemical Corp., 2601 Cannery Avenue, Baltimore, MD 21226-1595, who is the low bidder, at a price of \$231.93/dry ton for approximately 1,500 dry tons, for a total bid of \$347,895.00.

### BACKGROUND

Bids for approximately 1,500 dry tons of Aluminum Sulfate for use by the Reading Area Water Authority were received March 23, 2007.

A copy of the Schedule of Bids is attached for your review.

### BUDGETARY IMPACT

The Water Authority has confirmed there are sufficient funds in budget account code 50-15-84-4513 with \$165,829.85 remaining after the contract funds are encumbered.

### PREVIOUS ACTION

None.

### SUBSEQUENT ACTION

Formal action by Council is needed to award the contract at the May 14, 2007 meeting.

**RECOMMENDED BY**

Mayor, Managing Director, Reading Area Water Authority Executive Director, Finance Director, and Purchasing Coordinator.

**RECOMMENDED MOTION**

Approve/Deny the recommendation to award the contract to Delta Chemical Corp. for the purchase of Aluminum Sulfate.



# AGENDA MEMO

## FINANCE DEPARTMENT

**TO:** City Council  
**FROM:** Heather Dunkle, Purchasing Coordinator  
**PREPARED BY:** Heather Dunkle, Purchasing Coordinator  
**MEETING DATE:** May 14, 2007  
**AGENDA MEMO DATE:** May 9, 2007  
**RECOMMENDED ACTION:** Awarding of Contract for the resurfacing of Schlegel Park Pool for the Department of Public Works.

### RECOMMENDATION

The recommendation is to award the contract to Talucci Contractors, 1423 Gallagherville Road, Downingtown, PA 19335, who is the lowest responsible bidder, at a bid price of \$214,000.00.

### BACKGROUND

Bids for the resurfacing of Schlegel Park Pool were received on May 4, 2007 and the contract work must be completed by June 3, 2007. As noted above, Talucci Contractors was the lowest responsible bidder. The lowest bidder, K. Street Enterprises, Inc. did not submit the required ten percent (10%) bid surety; therefore, their bid was rejected.

A copy of the Schedule of Bids is attached for your review.

### BUDGETARY IMPACT

The Department of Public Works and Accounting have confirmed there are sufficient funds in the budget account code 34-07-74-4801, project code 34-07-74-110 to cover the contract, upon approval of amended Capital Improvement Program.

### PREVIOUS ACTION

None.

### SUBSEQUENT ACTION

Formal action by Council is needed to award the contract at the May 14, 2007 meeting.

**RECOMMENDED BY**

The Mayor, Managing Director, Directors of Finance and Public Works and the Purchasing Coordinator.

**RECOMMENDED MOTION**

Approve/Deny the recommendation for the resurfacing of Schlegel Park Pool in order that the contract may be awarded to Talucci Contractors.



**AGENDA MEMO**  
Thomas M. McMahon, MAYOR  
Leon Churchill, MANAGING DIRECTOR

**AGENDA MEMO**  
Thomas M. McMahon, MAYOR  
Leon Churchill, MANAGING DIRECTOR

*(Musical notation)*

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Adoption of the Revised 2007-2011 Capital Improvement Program (CIP) will provide continued funding for programs and policies that the City Council has established as priorities. The CIP will guide the City in the planning, scheduling, and budgeting of capital improvement projects during the next five-year period. Amendments are necessary to more accurately reflect project costs and to accommodate emerging projects that need to be addressed on a timely basis.

Projects Eliminated: 2007, Northwest Pool Renovations (\$443,900)

2006, East Reading Pool Renovations (\$250,000, and proposed for CDBG funding)

Project With Cost Changes: 2007, City Park Pond Remediation (moved up from 2011 and increased by \$100,000 to \$200,000)

New Projects: 2007, Downtown Camera Network (\$390,000)  
2007, African-American Museum Site Preparation (\$500,000)  
2007, Pagoda Renovations (\$443,900)  
2008, Hansen Dynamic Portal (\$286,000)

### **Financial Impact**

The 2007-2011 CIP is proposed to increase total expenditures by \$1,026,000. The specific changes include a reduction in 2006 by \$250,000; an increase in 2007 expenditures by \$990,000; and 2008 expenditures by \$286,000. The CIP has the capacity to fund these projects through previously approved financing in 2005. There is no expected change in debt service impact as stated in the Approved 2007-2011 CIP.

### **Other Board Action**

There is no other board action on this item.

### **Recommendations**

Adopt the ordinance as proposed.

### **Attachments**

Proposed Revised 2007-2011 CIP

**BILL NO. \_\_\_\_\_ 2006**  
**A N O R D I N A N C E**

**AN ORDINANCE AMENDING THE FY 2007-2011 CAPITAL IMPROVEMENT PLAN  
FOR THE CITY OF READING.**

**SECTION 1.** The City Council amends the FY 2007 to FY 2011 Capital Improvement Program totaling \$ 43,389,776 which, when compared to the FY 2006 to FY 2010 Approved Capital Improvement Program will reflect an increase of \$1,026,000 over six years, and deletions, postponements and rescheduling of certain capital projects and establishes planned funding levels for each of the six years of the capital plan; and

**SECTION 2.** The City Council moves to amend the 2007 Capital Budget totaling \$7,783,966, when compared to the FY 2007 Capital Budget, reflecting a \$990,000 increase from \$6,793,966.

**SECTION 3.** This Ordinance shall become effective ten (10) days after its approval, in accordance with Section 221 of the City of Reading Home Rule Charter.

Enacted \_\_\_\_\_, 2007

\_\_\_\_\_  
Vaughn D. Spencer, President of Council

Attest:

\_\_\_\_\_  
City Clerk  
Submitted to Mayor: \_\_\_\_\_  
Date: \_\_\_\_\_

Received by the Mayor's Office: \_\_\_\_\_  
Date: \_\_\_\_\_

Approved by Mayor: \_\_\_\_\_  
Date: \_\_\_\_\_

Vetoed by Mayor: \_\_\_\_\_  
Date: \_\_\_\_\_

**CITY OF READING  
CAPITAL IMPROVEMENTS PROGRAM  
FY 2006 - FY 2010**

PROJECT	YEAR	PROJ. COST	GENERAL REVENUES	DEBT FINANCING	GRANTS	FEDERAL STATE	ENTERPRISE	OTHER
<b>2006</b>								
E REPLACE RESCUE 1	2006	\$450,000		\$450,000				
TRAFFIC ENGINEERING LIQUID FUEL FUND PAVING	2006	\$750,000				\$750,000		
DISASTER RECOVERY	2006	\$1,250,000		\$1,250,000				
Uninterrupted Power Source	2006	\$67,000		\$67,000				
PURCHASE GIS SYSTEM FOR CITYWIDE	2006	\$3,000,000		\$750,000	\$150,000		\$2,100,000	
ENGINEERING CATCH BASINS	2006	\$50,000					\$50,000	
E BUILD OAKBROOK FIRE STATION	2006	\$1,500,000		\$1,500,000				
ICE RANGE CLASSROOM ADDITION	2006	\$52,000		\$52,000				
ENGINEERING CATCH BASIN MUSEUM ROAD	2006	\$54,000					\$54,000	
PUBLIC PROPERTY CITY HALL ROOF	2006	\$100,000		\$200,000				
RECREATION EAST READING POOL RENOVATION	2006	\$250,000		\$250,000				
n Street Bridge Lighting Repairs	2006	\$87,000		\$87,000				
HIGHWAYS SALT BRINE EQUIPMENT	2006	\$50,000		\$50,000				
RARY NORTHWEST BRANCH REPAIRS	2007	\$60,000		\$60,000				
TRAFFIC ENGINEERING FORCE IN CURB	2006	\$70,000						\$70,000
ICE EVIDENCE ROOM EXPANSION	2006	\$200,000		\$100,000				\$100,000
PUBLIC PROPERTY STADIUM HIGH MAST REPLACEMENT	2006	\$152,000		\$152,000				
ENGINEERING SCHLEGEL PARK POOL STORMWATER	2006	\$86,000					\$86,000	
RECREATION BAER PARK PLAYGROUND RENOVATION	2006	\$100,000		\$50,000	\$50,000			
RECREATION ESSICK PLAYGROUND RENOVATION	2006	\$100,000		\$0	\$100,000			
DIRECTIONAL SIGNAGE	2006	\$150,000			\$150,000			
AC Unit	2006	\$100,000.00						
<b>TOTAL</b>		<b>\$8,678,000</b>	<b>\$0</b>	<b>\$5,018,000</b>	<b>\$450,000</b>	<b>\$750,000</b>	<b>\$2,290,000</b>	<b>\$170,000</b>
<b>2007</b>								
E REPLACE ENGINE 1	2007	\$475,000		\$475,000				

E REPLACE ENGINE 14	2007	\$475,000	\$475,000						
ICE Downtown Camera Network	2007	\$1,785,000	\$390,000			\$1,395,000			
TRAFFICENGINEERING 13 & BERN TRAFFIC SIGNAL	2007	\$65,000	\$65,000						
RARY MAIN BRANCH RENOVATION	2007	\$140,000	\$140,000						
RECREATION CITY PARK PLAYGROUND RENOVATION	2007	\$50,000	\$50,000						
HIGHWAYS TRASH COMPACTOR TRUCK	2007	\$120,000	\$120,000						
PUBLIC PROPERTY BANDSHELL REHABILITATION	2007	\$80,000	\$80,000						
RECREATION NORTH WEST POOL RENOVATION	2007	\$443,900	\$443,900						
PUBLIC PROPERTY Pagoda Renovations	2007	\$443,900							
TRAFFIC ENGINEERING LIQUID FUEL FUND PAVING	2007	\$750,000				\$750,000			
ENGINEERING CATCH BASINS	2007	\$60,000						\$60,000	
TRAFFIC ENGINEERING FORCE IN CURB	2007	\$70,000							\$70,000
RECREATION ANGELICA BOATHOUSE COMPLETION	2007	\$50,000							\$50,000
HIGHWAYS DUMP TRUCK	2007	\$110,000	\$110,000						
RECREATION BAER PARK PLAYGROUND RENOVATION	2007	\$100,000	\$50,000			\$50,000			
RECREATION Hillside Playground Renovation	2007	\$70,000.00	\$60,000.00			\$10,000.00			
PUBLIC PROPERTY CITY STATUE REFURBISHING	2007	\$70,000	\$70,000						
SKYLINE DRIVE WALL REPAIR	2007	\$171,500	\$171,500						
D DEMO AND CLEARANCE	2007	\$1,000,000							\$1,000,000
D African American Museum Site Preparation	2007	\$500,000	\$500,000						
TRAFFIC ENGINEERING BUCKET TRUCK	2007	\$70,000	\$70,000						
RECREATION SCHLEGEL PARK POOL REPLASTER/TILE	2007	\$150,000	\$150,000						
TRAFFIC ENGINEERING HANDICAP RAMPS	2007	\$50,000	\$50,000						
PUBLIC PROPERTY 6 & PENN COURTYARD UPGRADE	2007	\$120,000	\$120,000						
PUBLIC PROPERTY ATHLETIC FIELD LIGHTING	2007	\$50,000	\$50,000						
PARKS City Park Pond Remediation & Water Feature	2007	\$200,000.00	\$200,000.00			Moved up from 2011 and Increased by \$100,000			
FLEET GARAGE OVERHEAD LUBRICATION SYSTEM	2007	\$114,666	\$114,666						
TOTAL		\$7,783,966	\$0	\$3,955,066	\$60,000	\$2,145,000	\$60,000	\$1,120,000	
2008									
TRAFFIC ENGINEERING LIQUID FUEL FUND PAVING	2008	\$700,000				\$750,000			
E REPLACE ENGINE 3	2008	\$485,000	\$485,000						
E BUILD PENN STREET FIRE STATION	2008	\$2,500,000	\$2,500,000						
PUBLIC PROPERTY STADIUM FIELD LIGHTING UPGRADES	2007	\$60,000	\$60,000						

PUBLIC PROPERTY STADIUM HIGH MAST PAINTING	2007	\$50,000		\$50,000					
RECREATION ANGELICA FISHING DOCK/BOAT HOUSE	2006	\$50,000						\$50,000	
PUBLIC PROPERTY CITY HALL BRASS RESTORATION	2007	\$75,000		\$75,000					
OUTDOOR FURNISHINGS	2007	\$60,000		\$60,000					
ansen Dynamic Portal	2008	\$286,000		\$286,000					
D ALLEY AND ROW IMPROVEMENTS	2007	\$250,000		\$200,000					\$50,000
ENGINEERING CATCH BASINS	2008	\$60,000						\$60,000	
TRAFFIC ENGINEERING FORCE IN CURB	2008	\$70,000							\$70,000
PUBLIC PROPERTY SIDEWALK REPLACEMENT	2008	\$50,000							\$50,000
RECREATION 3rd & SPRING PLAYGROUND RENOVATION	2008	\$160,000		\$80,000	\$80,000				
RECREATION BAER PARK FIELD HOUSE RENOVATION	2008	\$100,000		\$50,000	\$50,000				
D DEMO AND CLEARANCE	2008	\$1,000,000							\$1,000,000
TOTAL		\$5,956,000	\$0	\$3,846,000	\$130,000	\$750,000	\$110,000		\$1,170,000
2009									
E REPLACE ENGINE 9	2009	\$500,000		\$500,000					
TRAFFIC ENGINEERING LIQUID FUEL FUND PAVING	2009	\$1,050,000				\$1,050,000			
HIGHWAYS FRONT END LOADER	2008	\$175,000		\$175,000					
HIGHWAYS STREET SWEEPERS	2007	\$300,000		\$300,000					
FLEET BIG TRUCK LIFT	2008	\$50,000		\$50,000					
PUBLIC PROPERTY CITY HALL HVAC UPGRADES	2007	\$50,000		\$50,000					
TRAFFIC ENGINEERING HANDICAP RAMPS	2007	\$50,000		\$50,000					
E BUILD NEW HAMPDEN/MARION FIRE STATION	2009	\$2,500,000		\$2,500,000					
ENGINEERING CATCH BASINS	2009	\$60,000							\$60,000
TRAFFIC ENGINEERING FORCE IN CURB	2009	\$70,000							\$70,000
RECREATION NORTHMONT PLAYGROUND RENOVATION	2009	\$160,000		\$80,000	\$80,000				
D DEMO AND CLEARANCE	2009	\$1,000,000							\$1,000,000
TOTAL		\$5,965,000	\$0	\$3,705,000	\$80,000	\$1,050,000	\$0		\$1,130,000
2010									
E REPLACE LADDER 3	2010	\$850,000		\$850,000					
TRAFFIC ENGINEERING LIQUID FUEL FUND PAVING	2010	\$600,000				\$600,000			
RARY SOUTHEAST BRANCH REPAIRS	2008	\$70,000		\$70,000					
D ALLEY AND ROW IMPROVEMENTS	2008	\$250,000		\$200,000					\$50,000
PUBLIC PROPERTY ATHLETIC FACILITIES LIGHTING	2008	\$50,000		\$50,000					

TRAFFIC ENGINEERING HANDICAP RAMPS	2008	\$50,000		\$50,000					
PARKS FRONT END LOADER	2009	\$120,000		\$120,000					
HIGHWAYS STREET SWEEPERS	2009	\$300,000		\$300,000					
ENGINEERING CATCH BASINS	2010	\$60,000					\$60,000		
RARY MAIN BRANCH EXPANSION	2010	\$8,000,000		\$2,000,000	\$4,000,000				\$2,000,000
TRAFFIC ENGINEERING FORCE IN CURB	2010	\$70,000							\$70,000
RECREATION KEFFER PARK FIELD HOUSE RENOVATION	2010	\$100,000		\$50,000	\$50,000				
D DEMO AND CLEARANCE	2010	\$1,000,000							\$1,000,000
TOTAL		\$11,520,000	\$0	\$3,690,000	\$4,050,000	\$600,000	\$60,000		\$3,120,000
2011									
HIGHWAYS STREET SWEEPERS	2010	\$300,000		\$300,000.00					
PARKS GROUNDMASTER TRACTOR	2010	\$50,000		\$50,000.00					
RARY New NW Branch	2011	\$1,800,000.00		\$1,800,000.00					
PUBLIC PROPERTY ATHLETIC FACILITIES LIGHTING	2010	\$50,000		\$50,000.00					
RARY NORTHEAST BRANCH REPAIRS	2009	\$70,000		\$70,000.00					
TRAFFIC ENGINEERING HANDICAP RAMPS	2009	\$50,000		\$50,000.00					
TRAFFIC ENGINEERING HANDICAP RAMPS	2010	\$50,000		\$50,000.00					
PLANNING Whitewater Park	2007	\$522,810.00		\$522,810.00					
RECREATION PENDORA PARK FIELD HOUSE RENOVATION	2009	\$200,000		\$100,000.00	\$100,000.00				
RARY BOOK MOBILE REPLACEMENT	2010	\$120,000		\$120,000.00					
D ALLEY AND ROW IMPROVEMENTS	2009	\$250,000		\$200,000.00					
D ALLEY AND ROW IMPROVEMENTS	2010	\$250,000		\$200,000.00				\$50,000.00	
PUBLIC PROPERTY STADIUM FIELD LIGHTING UPGRADES	2010	\$60,000		\$60,000.00				\$50,000.00	
TOTAL		\$3,772,810	\$0	\$3,572,810	\$100,000	\$0	\$0		\$100,000
al CIP		\$43,675,776.00	\$-	\$23,786,876.00	\$4,870,000.00	\$5,295,000.00	\$2,520,000.00		\$6,810,000.00

SCHEDULED PROJECTS From 2006



<b>PUBLIC PROPERTY STADIUM HIGH MAST REPLACEMENT</b>	2006	\$100,000			
<b>TRAFFIC ENGINEERING LIQUID FUEL FUND PAVING</b>	2006	\$750,000			
<b>TRAFFIC ENGINEERING LIQUID FUEL FUND PAVING</b>	2007	\$750,000			
<b>TRAFFIC ENGINEERING LIQUID FUEL FUND PAVING</b>	2008	\$700,000			
<b>TRAFFIC ENGINEERING LIQUID FUEL FUND PAVING</b>	2009	\$1,050,000			
<b>TRAFFIC ENGINEERING LIQUID FUEL FUND PAVING</b>	2010	\$600,000			
<b>D ALLEY AND ROW IMPROVEMENTS</b>	2009	\$250,000	\$200,000		\$50,000
<b>RECREATION PENDORA PARK FIELD HOUSE RENOVATION</b>	2009	\$200,000	\$100,000	\$100,000	
<b>RARY NORTHEAST BRANCH REPAIRS</b>	2009	\$70,000	\$70,000		
<b>TRAFFIC ENGINEERING HANDICAP RAMPS</b>	2009	\$50,000	\$50,000		
<b>HIGHWAYS STREET SWEEPERS</b>	2010	\$300,000	\$300,000		
<b>PARKS GROUNDMASTER TRACTOR</b>	2010	\$50,000	\$50,000		
<b>PUBLIC PROPERTY ATHLETIC FACILITIES LIGHTING</b>	2010	\$50,000	\$50,000		
<b>TRAFFIC ENGINEERING HANDICAP RAMPS</b>	2010	\$50,000	\$50,000		
<b>RARY BOOK MOBILE REPLACEMENT</b>	2010	\$120,000	\$120,000		
<b>D ALLEY AND ROW IMPROVEMENTS</b>	2010	\$250,000	\$200,000		\$50,000
<b>PUBLIC PROPERTY STADIUM FIELD LIGHTING UPGRADES</b>	2010	\$60,000	\$60,000		
<b>TOTAL</b>		<b>\$5,400,000</b>	<b>\$1,250,000</b>		<b>\$100,000</b>

es:

The stadium high mast replacement project is proposed to remain unscheduled until final determination of whether to renovate or re-locate Municipal Stadium is made. Although street paving is budgeted every year, the magnitude of the effort is beyond the City's financial capacity, thus proposing State and Federal funding. The project could be debt financed, but the life of a road is less than 10 years making it a poor candidate for such funding.



CITY OF READING,  
PENNSYLVANIA

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M E M O R A N D U M

**TO:** Members of Council  
**FROM:** Linda A. Kelleher, City Clerk  
Charles Younger, City Solicitor  
**DATE:** April 25, 2007  
**SUBJECT:** Initiative and Referendum Ordinance

---

At the April 9<sup>th</sup> regular meeting Council tabled the Initiative and Referendum Ordinance requesting further discussion and consideration of that proposed. The President of Council asked if the Charter Board reviewed the proposed ordinance and issued an advisory opinion with suggested changes.

After lengthy review with the Solicitor, 7 of the 9 recommended changes were made. The 2 changes that were not taken are 1) 1-1103 Form and Content: allowing petitioners to submit home-made petition forms and 2) 1-1112 Procedure after Filing: verification of signatures on petitions. Rationale about why the original language was retained has been added to the attached draft. The attached draft marks each section as follows:

- Charter Board suggestions added are shown in yellow.
- Language that was not changed as suggested by the Charter Board is shown in pink.
- Rationale from the Solicitor and City Clerk are shown in blue.



**(Exhibit A)**

**§1-1100 Declaration of Purpose:**

The City of Reading City Council recognizes the importance of protecting and promoting the ability of our citizens to participate in government through Initiative and Referendum. Since the change to Home Rule government there have been approximately 10 citizen petitions efforts. The lack of clear instruction on the circulation and signature verification of initiative and referendum petitions in the Charter has caused many procedural problems, resulting in court challenges and legal fees to both the City and citizen groups. Therefore, through the enactment of this ordinance, City Council sets out regulations pertaining to the circulation and signing of initiative and referendum petitions to assist Reading voters with their rights to participation provided by the Home Rule Charter. *Reworded as suggested*

**§1-1101. Initiative and Referendum.**

A. **Initiative.** The qualified voters of the City shall have the power to propose ordinances to the Council. If the Council fails to adopt such an ordinance, the initiative process may be commenced giving the qualified voters of the City the opportunity to adopt or reject said ordinance at a City election. (*Charter, 11/3/1993, §1102*)

B. **Referendum.** The qualified voters of the City shall have the power to require reconsideration by the Council of any adopted ordinance. If the Council fails to repeal an ordinance so reconsidered, the referendum process may be commenced giving the qualified voters of the City the opportunity to approve or reject said ordinance at a City election. (*Charter, 11/3/1993, §1102*)

**§1-1102. Initiative and Referendum; Commencement of Proceedings; Petitioners Committee; Affidavit.**

A. Any five qualified voters of the City may commence initiative or referendum. A qualified voter is a legal resident of the City of Reading who is registered and constitutionally entitled to vote in Pennsylvania. *Reworded as suggested*

B. A qualified voter shall obtain a Petitioner's Committee Affidavit and Petition Forms from the City Clerk in the Council Office during regular business hours. *Reworded as suggested*

C. The Petitioner's Committee Affidavit shall state the names and addresses of 5 qualified voters who will constitute the Petitioner's Committee and be responsible for circulating the petition and filing it in proper form, and specifying the address to which all notices to the committee are to be sent, and setting out in full the proposed initiative ordinance or the ordinance sought to be reconsidered.

D. In case of referendum, such an affidavit must be filed within 10 days of the adoption of the ordinance

E. Within 5 days after the Petitioner's Committee Affidavit is filed and validated, the City Clerk shall issue the appropriate petition blanks to the petitioners. (*Charter, 11/3/1993, §1103*)

### **§1-1103. Form and Content**

The form and content of each petition pack shall be prepared as follows:

1. Each petition shall be uniform in size and style on 8 ½ x 11 paper, marked sequentially and/or contain a serial number.
2. Each petition pack shall contain a one petition.
3. Have an Affidavit of Circulator, as defined in Section 1-1104 below.
4. Contain complete text of the initiative ordinance being considered or the ordinance to be considered for repeal by referendum, as stated in Section 1-1105 or 1-1106 below.
5. Contain no more than 20 signature lines for the printed name, address, ward, precinct, signature of each person signing the petition, and the date signed.
6. Contain a Warning Statement advising that it is unlawful for anyone to sign any initiative or referendum petition with any name other than his/her own, or to knowingly sign his/her name more than once for the same proposal, or to sign such petition when he/she is not a legal voter in the City of Reading.
7. No corrections, additions or alterations shall be made to the form of all petitions issued by the City Clerk to the Petitioner's Committee. *Reworded as suggested*

Any petition not following the form and content set out above shall be declared invalid.

*After reviewing and considering the Charter Board's Advisory Opinion, the City Solicitor and City Clerk decided against using the Charter Board's suggested language stating "However, the Clerk may not refuse to accept either the Petitioner's Committee affidavits or petitions solely on the basis of Sections 1-1102(B) and 1-1103 of this Ordinance when such petitions to affidavits are otherwise complaint with the Charter and state law." The Elections Code §2867 states that nomination petitions are to be in a form prescribed by the Secretary of the Commonwealth. The County Election's Office does not allow those running for office to submit homemade nomination petitions.*

**§1-1104. Affidavit of Circulator.** Each paper of a petition shall have attached to it

upon filing a notarized affidavit executed by the circulator thereof stating that he or she personally circulated the paper, the number of signatures thereon, that all the signatures were affixed in the circulator's presence, and believes them to be valid and that each signer had an opportunity before signing to read the full text of the ordinance proposed or sought to be reconsidered. (*Charter*, 11/3/1993, §1102)

**§1-1105. Initiative Petitions.** All Initiative Petitions shall contain an initiative statement, describing the intent of the ordinance not exceeding 100 words, phrased in the form of a question that can be answered only with an affirmative or negative response. The initiative statement may be distinct from the petitioner's title of the measure, and shall express and give a true and impartial statement of the purpose of the measure. It shall not intentionally be an argument, nor likely to create prejudice, either for or against the measure. This statement shall be delivered to the City Clerk at the time the request for the Petitioner's Committee Petition form is requested. Each petition shall also have attached to it the full body of the initiative ordinance.

**§1-1106. Referendum Petitions.** All Referendum Petitions shall contain the title of the bill enacted by City Council as well as the bill number and date of enactment of the bill sought to be repealed. Each petition shall also have attached to it the full body of the bill sought to be repealed.

**§1-1107. Signatures.** Initiative and referendum petitions must be signed in ink or indelible pencil by 2000 qualified voters of the City of Reading. *Reworded as suggested*

**§1-1108. Circulation of Petitions.** The Petitioner's Committee shall be responsible for instructing circulators on the regulations and guidelines for circulating petitions, as contained herein.

- A. All circulators must reside in the City of Reading and be registered to vote as defined in §1-1102 A above.
- B. Each person collecting signatures must allow any person to review the text of the initiative ordinance or ordinance to be reconsidered.
- C. Each signature collected must be personally witnessed by the circulator.
- D. The circulator must complete the Affidavit of Circulator before a Notary Public after all the signatures on the sheet have been collected.

E. Circulators must not attempt to obtain signatures of persons knowing that the person signing the petition is not qualified to sign it.

F. Circulators must not offer money or any thing of value to another person or threaten a person to sign or not to sign a petition, nor shall they sell or offer to sell signature sheets.

G. Circulators must not accept compensation to circulate a petition that is based on the number of signatures obtained.

H. Any person violating the circulator regulations shall be charged in accordance with the applicable offense sections of the Elections Code 25 P.S. §2601 et seq.

**§1-1108. Time for Circulating and Filing Referendum Petitions.** Referendum petitions must be circulated and filed within 35 days after the filing of the Petitioner's Committee Affidavit. The City Clerk shall only accept petitions filed by the Petitioner's Committee. The City Clerk shall not accept any petitions submitted by any other circulators, representatives or agents thereof.

**§1-1109. Time for Circulation and Filing Initiative Petitions.** Initiative petitions must be circulated and signed within a period of 65 days from the date of the filing of the Petitioners Committee Affidavit with the City Clerk. The City Clerk shall only accept petitions filed by the Petitioner's Committee. The City Clerk shall not accept any petitions submitted by any other circulators, representatives or agents thereof.

**§1-1110. Referendum Petitions; Suspension of Effect of Ordinance.**

When a referendum petition is filed with the City Clerk, the ordinance sought to be reconsidered shall be suspended from taking effect. Such suspension shall terminate when:

A. There is a final determination of insufficiency of the petition; or

B. The Petitioner's Committee withdraws the petition; or

C. Council repeals the ordinance; or

D. Thirty-five days have elapsed since the issue of the affidavit and the required number of signatures has not been secured. (*Charter*, 11/3/1993, §1106)

**§1-1111. Submission of Petitions**

Before submitting the signature sheets for verification, the Petitioner's Committee must stack petition packs beginning with the number 1 and continue sequentially until all sheets petitions issued are accounted for. The petitions submitted must contain at least 2000 original signatures. The Petitioner's Committee must also include a letter stating how many signatures they purport to have. The City Clerk shall advise the Petitioner's Committee of their ability to obtain the necessary number of signatures **or make other corrections** in accordance with Section 1-1113 of this part herein. *reworded as suggested*

## **§1-1112. Initiative and Referendum; Procedure after Filing.**

### **A. Sufficiency of Petitions – Determination**

No petition for referendum shall be filed with the City Clerk unless it contains the required number of signatures. Upon filing of a petition for initiative or referendum with the City Clerk, the City Clerk shall make an initial face value determination of sufficiency and report the results thereof to the City Council within two (2) days of the date of such filing. The City Clerk may make its determination of sufficiency of the petitions and the signatures contained thereon as stated hereafter and in Section 1-1113 below.

B. After completing the initial face value determination, the City Clerk may complete a verification process to find whether signatures of individuals on the petitions are insufficient in the following categories:

1. Address shown by signer is not located within the city limits of the City of Reading;
2. Any signature appearing on the petition more than once, in which event all signatures of said individual shall be deleted except one;
3. More than one individual signature is on a signature line, in which event the line shall count as one;
4. Signature lines containing incomplete information or information which was not completed by the elector or a person qualified to assist the elector shall not be counted;
5. Signature and information that does not match the County's Voter Registration Records;
6. Signatures of individuals who are not registered electors in the city.
7. Each petition pack shall only contain one petition; multiple petitions may not be attached to a single ordinance and circulators affidavit. *Reworded as suggested*

C. The petition may not be removed and no signature may be removed or deleted by a signer, circulator, or representative of a circulator or signer after the petitions have been

filed with the City Clerk. Copies of the petitions submitted will not be provided to the Petitioner's Committee by the City.

**After reviewing and considering the Charter Board's Advisory Opinion, the City Solicitor and City Clerk decided against using the Charter Board's suggested language stating (in summation) that the City Charter only permits a facial examination by the City Clerk as to the requirements in Charter Section 1104. After reviewing and considering this opinion, the City Solicitor and City Clerk decided against using the language suggested by the Charter Board for the following reasons:**

**1. Charter Section 1104 states**

**"1. Certificate of Clerk; Amendment.** Within 20 days after the petition is filed, the *City Clerk shall complete a certificate as to its sufficiency, specifying, if it is insufficient, the particulars wherein it is defective and shall promptly send a copy of the certificate to the*

*petitioners committee by registered mail.* A petition certified insufficient for lack of the required number of valid signatures may be amended once if the petitioners committee files a notice of intention to amend it with the City Clerk within 2 days after receiving the

copy of the certificate and files a supplementary petition upon additional papers within 10 days after receiving the copy of such certificate. Such supplementary petition shall comply with the requirements of subsection (2) and (3) of §1104, and within 5 days after it is filed, the City Clerk shall complete a certificate as to the sufficiency of the petition as amended and promptly send a copy of such certificate to the petitioners committee by

registered mail as in the case of an original petition. If a petition or amended petition is certified insufficient and the petitioners committee does not elect to amend or request Council review under subsection (2) of this section within the time required, the City Clerk shall promptly present their certificate to the Council and the certificate shall then be a final determination as to the sufficiency of the petition.

**2. Council Review.** If a petition has been certified insufficient and the petitioners committee

does not file notice of intention to amend it, or if an amended petition has been certified insufficient, the committee may, within 2 days after receiving the copy of such certificate,

file a request that it be reviewed by the Council. The Council shall review the certificate at its next meeting following the filing of such request and approve or disapprove it, and

the Council's determination shall then be a final determination as to the sufficiency of the petition.

**3. Court Review; New Petition.** A final determination as to the insufficiency of a petition shall be subject to court review. A final determination of insufficiency, even if sustained



upon court review, shall not prejudice the filing of a new petition for the same purpose.”

**The Elections Code §2936 states** “When any nomination petition, nomination certificate or nondiscrimination paper is presented in the office of the Secretary of the Commonwealth or of any county board of elections for filing within the period limited by this act, it shall be the duty of said officer to examine the same. No nomination petition, nomination paper or nomination certificate shall be permitted to be filed if-(a) it contains material errors or defects apparent on the face thereof, or on the face of the appended or accompanying affidavits; or (b) it contains material alterations made after signing without the consent of the signers; or (c) it does not contain a sufficient number of signatures as required by law; *Provided, however, That the Secretary of the Commonwealth or the county board of elections, although not hereby required so to do, may question the genuineness of any signature or signatures appearing thereon, and if he or it shall thereupon find that any such signature or signatures are not genuine, such signature or signatures shall be disregarded.*”

**The Elections Code §2936 gives the county elections board the discretion to perform a closer inspection of the signatures on a nomination petition and to remove those found to be faulty. The Elections Office provides notification to the petitioner only if the entire petition is found to be invalid. Challenges to nomination petitions must be submitted to the Prothonotary and Elections Office within 7 days of filing. The party filing the objection must then inform the petitioner that an objection was filed. Decisions on challenges to nomination petitions are made by the Court of Common Pleas. Applying the sections of the Elections Code that speak to the challenge of nomination petitions would not work with initiative and referendum petitions.**

**The Charter language does not limit the City Clerk to a facial inspection. The Solicitor and City Clerk believe that by providing the City Clerk with 20 days to determine if a petition is sufficient the Charter is providing time for a discretionary review of the signatures. We believe that if a facial examination alone was intended, the Charter would not provide the City Clerk with a 20 day review period, as it certainly would not take 20 days to perform a facial review and count 2000 signatures. After the review, the Charter allows the Petitioners Committee with one opportunity to amend a faulty petition. The Petitioners Committee may appeal the City Clerk’s sufficiency decision to either City Council or the Court of Common Pleas. Again, with nomination petitions all challenges are made to the Court of Common Pleas.**

**The Solicitor and City Clerk believe that the processes used for nomination petitions and initiative and referendum petitions can be similar but not the same. People**

challenging nomination petitions are trying to block someone from running for public office. Who could be a party to challenge an initiative or referendum petition? A citizen would not know that an initiative or referendum was filed as these actions do not take place at each election. The Elections Code speaks to the challenge of nomination petitions, the Charter does not. We do not believe the Charter intended to allow challenges to initiative and referendum petitions, instead it provided time for review of the petitions to protect the integrity of the entire process.

The petitions used to initiate an ordinance opposing the Civic Center back in the late 90's had very few flaws upon facial review and staff in the City Clerk's office did not undertake a full scale verification process. However, the petitions the City Clerk's Office received for the repeal of the PSR and the repeal of the Solid Waste Ordinance did have facial flaws such as circulators who were not City residents, homemade petitions, different handwriting on many signature lines, signatures from people who were not City residents, etc. which warranted a closer inspection.

The City Solicitor and City Clerk believe that the difference in the time of review (20 days for the City Clerk and 7 for the Elections Office) indicates that the initiative and referendum petitions are to receive more than facial scrutiny. We believe that providing these discretionary powers to the City Clerk is important.

**§1-1113. Certificate of Clerk; Amendment.** Within 20 days after the petition is filed, the City Clerk shall complete a certificate as to its sufficiency, specifying, if it is insufficient, the particulars wherein it is defective and shall promptly send a copy of the certificate to the Petitioner's Committee by registered mail.

A petition certified insufficient for lack of the required number of valid signatures may be amended once if the Petitioner's Committee files a notice of intention to amend it with the City Clerk within 2 days after receiving the copy of the certificate and files a supplementary petition upon additional papers to be supplied by the City Clerk within 10 days after receiving the copy of such certificate.

Such supplementary petition shall comply with the requirements of this Chapter and within 5 days after it is filed, the City Clerk shall complete a certificate as to the sufficiency of the petition as amended and promptly send a copy of such certificate to the Petitioner's Committee by registered mail as in the case of an original petition.

If a petition or amended petition is certified insufficient and the Petitioner's Committee does not elect to amend or request Council review under Section 1-1114 within the time required, the City Clerk shall promptly present their certificate to the Council and the

certificate shall then be a final determination as to the sufficiency of the petition. (*Charter*, 11/3/1993, §1102)

**§1-1114 Council Review.** If a petition has been certified insufficient and the Petitioner's Committee does not file notice of intention to amend it, or if an amended petition has been certified insufficient, the committee may, within 2 days after receiving the copy of such certificate, file a request that it be reviewed by the Council. The Council shall review the certificate at its next meeting following the filing of such request and approve or disapprove it, and the Council's determination shall then be a final determination as to the sufficiency of the petition. (*Charter*, 11/3/1993, §1102)

**§1-1115. Court Review; New Petition.** A final determination as to the insufficiency of a petition shall be subject to court review. A final determination of insufficiency, even if sustained upon court review, shall not prejudice the filing of a new petition for the same purpose. (*Charter*, 11/3/1993, §1105)

**§1-1116. Initiative and Referendum; Action on Petitions.**

**A. Action by Council.** When an initiative or referendum petition has been finally determined sufficient, the Council shall promptly consider the proposed initiative ordinance in the manner provided in Article II of the Charter or reconsider the referred ordinance by voting its repeal. If the Council fails to adopt a proposed initiative ordinance without any change in substance within 60 days or fails to repeal the referred ordinance within 30 days after the date the petition was finally determined sufficient, it shall submit the proposed or referred ordinance to the voters of the City. (*Charter*, 11/3/1993, §1102)

**B. Submission to Voters.** The question shall be placed on the ballot at the next primary, municipal or general election occurring at least 35 days after final Council action. Copies of the proposed and referred ordinance shall be made available at the voting precincts. (*Charter*, 11/3/1993, §1102)

**C. Withdrawal of Petitions.** An initiative or referendum petition may be withdrawn at any time prior to the 45th day preceding the day scheduled for a vote of the City by filing with the City Clerk a request for withdrawal signed by at least four members of the Petitioner's Committee. Upon the filing of such request, the petition shall have no further force of effect and all proceedings thereon shall be terminated. (*Charter*, 11/3/1993, §1107)

**§1-1117. Initiative and Referendum; Results of Election.**

**A. Initiative.** If a majority of the qualified voters voting on a proposed initiative vote in its favor, it shall be considered adopted upon certification of the election results and shall be treated in all respects in the same manner as ordinances of the same kind adopted by the Council. If conflicting ordinances are approved at the same election, the one receiving the greatest number of affirmative votes shall prevail to the extent of such conflict.

**B. Referendum.** If a majority of the qualified voters voting on a referred ordinance vote against it, it shall be considered repealed upon certification of the election.

(*Charter*, 11/3/1993, §1108)

**§1-1118. Initiative and Referendum; Limitations.**

**A. Default of Initiative and Referendum.** Any ordinance proposed or sought to be reconsidered which is rejected by the qualified voters in an election cannot be resubmitted for initiative and referendum for a period of 2 years from the date of the election where the ordinance was defeated. (*Charter*, 11/3/1993, §1102)

**B. Repeal or Modification of Initiative and Referendum by Council.** The Council shall take no action to repeal or significantly modify an ordinance adopted by initiative and referendum within a period of 2 years from the date of the election at which the ordinance was approved. (*Charter*, 11/3/1993, §1102)

**C. Limit on the Number of Initiative and Referendum.** No more than two initiative and two referendum measures may be placed on the ballot at any primary, municipal or general election. The first two initiative and referendum measures which are filed with the City Clerk will be the only ones allowed on the ballot. (*Charter*, 11/3/1993, §1109)

BILL NO. \_\_\_\_\_-2007

**A N O R D I N A N C E**

**AMENDING CHAPTER 20 PART 2 – DUMPSTER PLACEMENT OF  
THE CITY OF READING CODIFIED ORDINANCES**

**THE CITY OF READING HEREBY ORDAINS AS FOLLOWS:**

**SECTION 1:** Amending Chapter 20 Part 2 of the City of Reading Codified Ordinances as attached hereto as Exhibit A.

**SECTION 2:** All relevant ordinances, regulations and policies of the City of Reading, Pennsylvania not amended per the attached shall remain in full force and effect.

**SECTION 3:** If any section, subsection, sentence or clause of this ordinance is held, for any reason, to be invalid, such decision shall not affect the validity of the remaining portions of the Ordinance.

**SECTION 4:** This Ordinance shall become effective in ten (10) days, in accordance with Charter Section 219.

Enacted \_\_\_\_\_, 2007

\_\_\_\_\_  
Council President

Attest:

\_\_\_\_\_  
City Clerk

Submitted to Mayor: \_\_\_\_\_

Date: \_\_\_\_\_

Received by the Mayor's Office: \_\_\_\_\_

Date: \_\_\_\_\_

Approved by Mayor: \_\_\_\_\_

Date: \_\_\_\_\_

Vetoed by Mayor: \_\_\_\_\_

Date: \_\_\_\_\_

# EXHIBIT A

## **PART 2**

### **DUMPSTER PLACEMENT**

#### **§20-201. Definitions.**

The following words and phrases when used in this Part shall have, unless the context clearly indicates otherwise, the meanings given to them in this Section:

**BUSINESS DAY** - that part of any day on which City Hall is open to the public for carrying on substantially all of its functions.

**CART** - any container which is made of rigid plastic, with two wheels, which is intended to be mechanically emptied and used for the purpose of temporarily holding refuse with a maximum capacity of ½ cubic yard.

**COMMERCIAL** - a property relating to or connected with trade and traffic or commerce in general or a property which includes four or more separate residential dwelling units.

**CONTAINER** - any dumpster, toter, trash can, trash receptacle or cart.

**CURBLINE** - the line in the public right-of-way, constructed or proposed, as shown on the official map, that separates the portion of the public right-of-way dedicated to vehicular traffic from that dedicated to pedestrian traffic.

**DUMPSTER** - any container used for the purpose of storing refuse until the scheduled collection day with a capacity of 1 cubic yard (202 gallons) or greater.

**DUMPSTER OWNER** - one who rents dumpsters, carts or toters to another ~~(that is, a licensed hauler).~~

**HAULER** - any person, licensed or unlicensed, who collects, transports or disposes of recyclables, solid waste or refuse.

**LICENSED HAULER** - one who rents dumpsters or toters to another who has a valid City and State hauler's license.

**LESSEE** - a property owner or agent thereof who ~~or~~ leases a dumpster or toter from a licensed hauler as defined herein.

**OBSTRUCTION** - any structure or other object whatsoever that, in any manner, impedes, obstructs or otherwise limits or prevents that full and unrestricted use whatsoever, by the public, of any public right-of-way.

**OFFICIAL MAP** - the topographical survey of Reading, Pennsylvania, on file in the Engineering Office.

**PASSABLE** - free of any impediment or obstruction, whatsoever, that would hinder the travel of the public.

**PERMANENT DUMPSTER** - any dumpster - of a 3 cubic yards or less - intended to be used for an undetermined period of time for the purpose of solid waste storage.

**PERMITTEE** - the person applying for and receiving a permit for a dumpster, toter, cart, trash can or trash receptacle

**PROPERTY OWNER/LESSEE** - a property owner or agent thereof who ~~owns or~~ leases a dumpster, cart or toter as defined herein ~~or who applies and receives a permit for permanent placement of trash receptacle in the public right-of-way.~~ or a property owner whom is required to obtain a permit or approval to place a trash can or receptacle in the public right-of-way or visible from the public right-of-way

**PUBLIC RIGHT-OF-WAY** - the area between topographical building lines (for the purpose of this Part) set aside for public use or ownership as a street, alley, crosswalk, easement or other similar facility.

**RESIDENTIAL** - a property containing four or fewer separate dwelling units.

**SIDEWALK** - that portion of the sidewalk area for which paving is required by *Ord. 25-1889, 6/28/1889, §1 [§21-503]*.

**SIDEWALK AREA** - that portion of the public right-of-way occurring between the curblin and the topographical building line (for the purpose of this Part).

**STREET PROPERTY LINE** - the line that is coincident to and identical with the line marking the extremity of the public right-of-way as shown on the official map of the City of Reading.

**TEMPORARY DUMPSTER** - any dumpster intended to be used for a specified period of time for the purpose of construction, demolition or rehabilitation waste storage.

**TOPOGRAPHICAL BUILDING LINE** - the property line as shown on the official map of the City of Reading.

**TOTER** - any container which is made of rigid plastic, with two wheels, which is intended to be mechanically emptied and used for the purpose of temporarily holding of refuse with a maximum capacity of ½ cubic yards

**TRASH CAN** - any container under 95 gallons made of rigid plastic or metal used to hold refuse that differs in any way from a cart or toter (defined above).

**TRASH RECEPTACLE** - container used for the storage of trash.

(Ord. 38-2005, 7/13/2005, §1)

#### **§20-202. General.**

1. Dumpster, toter, cart, trash can or trash can lessees, owners, permittees shall be responsible for keeping the area around the container clean and sanitary as required by herein, Health Code Regulations [Chapter 10, Part 1] and the Property Maintenance Code [Chapter 5, Part 6].

2. Dumpster, toter cart, trash can or trash receptacles shall not be located in areas visible from the public right-of-way, unless permitted by the Codes Enforcement Division ~~Department of Public Works~~.

3. Each property shall have no more than one cart per unit to a maximum of two carts per property address stored within the public right-of-way.

(Ord. 38-2005, 7/13/2005, §1)

#### **§20-203. CONDITIONS OF USE.**

##### **1. Placement and Maintenance for Trash Cans.**

A. **Placement.** Trash cans or receptacles other than dumpster, cart or toter shall be located in the rear of properties and may not be visible from the public right-of-way area of a property. Trash cans shall not be stored within the public right-of-way on commercial, industrial property, or residential property unless it has been determined by the Codes Enforcement Division and Department of Public Works that no other location is available for trash storage and a permit for such storage has been obtained from the City.

(1) **Outside View Of Or Public Right of Way.** Trash cans or receptacles other than a dumpster, cart or toter are permitted to be placed in areas that are not in or visible from the public right-of-way without obtaining a permit / approval from the Codes Enforcement Division and any other requisite Division, Board, or Authority.

(2) **Generally Visible From or in Public Right of Way.** Trash cans or receptacles other than a dumpster, cart or toter may be permanently placed within the public right-of-way when it has been determined by the Code Enforcement Division and Department of Public Works that no other accessible location is available for trash collection and storage and the owner has received the necessary permit. The permit shall be placed on the trash receptacle.-The Codes



Enforcement Division in conjunction with the Department of Public Works shall have the authority to determine feasibility.

(3) **Historical Districts.** No permanent trash can or receptacle other than a dumpster, cart or toter shall be allowed on any public right-of-way or be allowed to be visible from any public right-of-way in any area designated as a historic district in the Codified Ordinances of the City. Where it is preclusive to place a trash can or receptacle other than a dumpster, cart or toter out of view of the public right of way as a result of the design of the structure, the location of placement of the can or receptacle other than a dumpster, cart or toter shall be determined and a permit issued accordingly upon consultation with the Codes Division and Historic Preservation Officer. Issuance of a permit for placement of a container in a historic district within the view of the public right of way is subject to the Historical District Ordinance, Ordinance 35-1999 Codified as Chapter 4 Part 1, where appropriate.

*Ord. 35-1999, 12/13/1999 [Chapter 4, Part 1 (Historical District Ordinance)].*

(4) **In Areas Under the Jurisdiction of the Downtown Improvement District.** No permanent trash cans or receptacles other than a dumpster, cart or toter shall be installed in any public right-of-way or be visible from any public right-of-way in any area under the jurisdiction of the Downtown Improvement District without review and approval by the Department of Public Works, Historic Preservation Specialist and the Downtown Improvement District Authority pursuant to *Ord. 134-1994, 1/11/1995 [Chapter 1, Part 4D]*.

B. **Identification.** The owner of the trash cans or receptacles other than a dumpster, cart or toter shall place and maintain, on the outside of each container in legible letters not less than 1 inch in height, the owners name, address receptacle is servicing (if private) ~~on~~ the permit issued by the Codes Enforcement Division for such container, where applicable.

C. **Maintenance.** Each trash can or receptacle other than a dumpster, cart or toter shall be covered at all times by a clean, leakproof, proper fitting and functioning lid. All trash can or receptacle shall not be loaded at any time in such a manner to constitute overloading thereby preventing suitable required covering.

*(Ord. 38-2005, 6/13/2005, §1)*

D. **Clearance Requirements.** Permitted trash cans or receptacles other than a dumpster, cart or toter shall not obstruct or otherwise limit or prevent the full and unrestricted use of any public right-of-way. Minimum sidewalk clearances of 5 feet must be retained at all times.

E. **Set Out Requirements.**

(1) Trash cans or receptacles other than a dumpster, cart or toter may be placed temporarily at curbside directly in front of the property being serviced no earlier than 8:30 p.m. the day before and shall be removed from the public right-of-way by 8:00 p.m. the day of schedule refuse collection.

## **2. Placement and Maintenance of Dumpsters**

A. **Placement.** Dumpsters shall be located in the rear of properties and may not be visible from the public right-of-way area of a property. Dumpsters shall not be stored within the public right-of-way or visible from the public right-of-way on commercial, industrial property, or residential property UNLESS it has been determined by the Department of Public Works and the Codes Division that no other location is available for trash storage and a permit for such storage has been obtained from the City.

(1) **Containers in Historic Districts.** No dumpsters shall be allowed on any public right-of-way or be allowed to be visible from any public right-of-way in any area designated as a historic district in the Codified Ordinances of the City. Where it is preclusive to place a dumpster out of view of the public right of way as a result of the design of the structure,

the location of placement of the dumpster shall be determined and a permit issued accordingly upon consultation with the Codes Division and Historic Preservation Officer. Issuance of a permit for placement of a dumpster in a historic district within the view of the public right of way is subject to the Historical District Ordinance, Ordinance 35-1999 Codified as Chapter 4 Part 1, where appropriate.

**(2) Containers in Areas Under the Jurisdiction of the Downtown Improvement**

**District.** No dumpster shall be installed in any public right-of-way or be visible from any public right-of-way in any area under the jurisdiction of the Downtown Improvement District without review and approval pursuant to *Ord. 134-1994*, 1/11/1995 [Chapter 1, Part 4D].

**(3) Sidewalk.** Dumpsters of 3 cubic yards or greater may not be placed on the sidewalk.

**(4) Street.** Dumpsters of 3 cubic yards or less may not be placed in the street.

**B. Identification.** The dumpster owner shall place and maintain, on the outside of each dumpster in legible letters not less than 1 inch in height, the owners name or company logo, telephone number, and the dumpster permit issued by the Codes Division for such container. All dumpsters shall be fitted with Department of Transportation regulated reflective tape in a vertically stripped fashion on each of the four corners from the top of the base (or bottom), extending around each corner by a minimum of 2 feet. [*Ord. 12-2005*]

**C. Maintenance.** All dumpsters shall be well painted, leak proof, in good repair, clean and free of offensive odors. All dumpsters shall not be loaded at any time in such a manner to constitute overloading thereby preventing suitable required covering.

**D. Clearance Requirements.** Permitted dumpsters shall not obstruct or otherwise limit or prevent the full and unrestricted use, of any public right-of-way. Minimum sidewalk clearances of 5 feet must be retained at all times.

**E.. Temporary and Permanent Dumpsters.**

**(1) Temporary Dumpsters.** Temporary dumpsters, incidental to construction, rehabilitation or demolition work, may be placed within the public right-of-way for a maximum of 10 calendar days after receipt of the necessary permit. The permit shall be displayed on the dumpster. All temporary dumpsters with contents shall be covered with a suitable cover or tarpaulin during: (a) periods of non-use; (b) night hours (6:00 p.m. to 6:00 a.m.); (c) high wind conditions; or (d) transport in order to prevent unauthorized use and/or scattering of any contents therein.

**B. Permanent Dumpsters.** Permanent dumpsters - 3 cubic yards or less - may be placed within the public right-of-way when it has been determined by the Codes Enforcement Division in conjunction with the Department of Public Works that no other location is available for trash collection and storage and the owner has received the necessary permit. The owner must first demonstrate that this dumpster is necessary to ensure the health and safety for area residents and patrons. Dumpster 3 cubic yards or greater cannot be permanently placed in any right-of-way.

**3. Placement and Maintenance of Permanent Carts or Toters.**

**A. Placement.** Carts or toters shall be located in the rear of properties and may not be visible from the public right-of-way area of a property. Carts or toters shall not be stored within the public right-of-way on commercial, industrial property, or residential property UNLESS it has been determined by the Department of Public Works and the Codes Division that no other location is available for trash storage and a permit for such storage has been obtained from the City.

**(1) Containers in Historic Districts.** No carts or toters shall be allowed on any public right-of-way or be allowed to be visible from any public right-of-way in any area

designated as a historic district in the Codified Ordinances of the City. Where it is preclusive to place a cart or toter out of view of the public right of way as a result of the design of the structure, the location of placement of the cart or toter shall be determined and a permit issued accordingly upon consultation with the Codes Division and Historic Preservation Officer. Issuance of a permit for placement of a cart or toter in a historic district within the view of the public right of way is subject to the Historical District Ordinance, Ordinance 35-1999 Codified as Chapter 4 Part 1, where appropriate.

**(2) Containers in Areas Under the Jurisdiction of the Downtown Improvement**

**District.** No cart or toter shall be installed in any public right-of-way or be visible from any public right-of-way in any area under the jurisdiction of the Downtown Improvement District without review and approval pursuant to *Ord. 134-1994*, 1/11/1995 [Chapter 1, Part 4D].

**B. Identification.** The cart or toter owner shall place and maintain, on the outside of each cart or toter in legible letters not less than 1 inch in height, the owners name or company logo, telephone number, and the permit issued by the Codes Division for such containers. All carts or toters shall be fitted with Department of Transportation regulated reflective tape in a vertically stripped fashion on each of the four corners from the top of the base (or bottom), extending around each corner by a minimum of 2 feet. [*Ord. 12-2005*]

**C. Maintenance.** All carts or toters shall be well painted, leak proof, in good repair, clean and free of offensive odors. All carts or toters shall not be loaded at any time in such a manner to constitute overloading thereby preventing suitable required covering.

**D. Clearance Requirements.** Permitted carts or toters shall not obstruct or otherwise limit or prevent the full and unrestricted use, of any public right-of-way. Minimum sidewalk clearances of 5 feet must be retained at all times.

**§20-204. Permits, Fees and Fines.**

**1. Temporary Dumpsters .**

A. Permits shall be obtained by the licensed hauler and are required for each dumpster in the public right-of-way or in view of the public right-of-way in the City of Reading. The licensed hauler applying for a dumpster permit shall list the address which the dumpster will service.

B. The cost of the permit shall be five dollars a day not to exceed \$75 in 10 calendar days with a minimum of \$25.

C. Permits for temporary dumpsters may be renewed for up to 10 calendar day increments at the sole discretion of the Codes Enforcement Division if the work is deemed to be in the best interest of the public. Each renewal permit shall cost equal to the cost of the first 10 calendar days.

D. The permit shall be displayed on the dumpsters for which the permit was issued.

E. In the event the City incurs costs described herein, an accounting of such expenses shall be delivered along with a bill to the licensed hauler at which time payment to City shall be due and payable. This shall have no effect on other action the City may take such as issuing citations for violations of this Part.

**2. Permanent Dumpsters.**

A. Permits shall be obtained by the licensed hauler and are required for each

dumpster in the public right-of-way or in view of the public right-of-way in the City of Reading. The licensed hauler applying for a dumpster permit shall list the address which the dumpster will service.

B. The dumpster permits may be transferred to other locations within the City of Reading. The licensed hauler must provide the new service address within 1 business day prior to the relocation of service for the license to be transferred without fee or fine. The dumpster permit may be transferred to other locations within the City of Reading. The licensed hauler must provide the new service address prior to relocating the dumpster to the new address and a new permit will be issued without fee by the Codes Enforcement Division, which must be placed on the dumpster.

C. The permit shall be displayed on the dumpster for which the permit was issued. The permit shall be issued for a period of 1 year.

D. The cost of the dumpster permit shall be \$150 annually. The lessee shall provide to the City, upon request, a copy of the lease agreement if applicable and the agreement with the licensed hauler with schedule of pickup.

E. In the event the City incurs costs described herein, an accounting of such expenses shall be delivered along with a bill to the licensed hauler, at which time payment to City shall be due and payable. This shall have no effect on other action the City may take such as issuing citations for violations of this Part.

### **3. Permanent Cart or Toter.**

A. Permits shall be obtained by a licensed hauler and/or cart/toter owner and are required for each cart /toter in the public right-of-way or in the view of the public right-of-way in the City of Reading. The licensed hauler applying for a cart /toter permit shall list the address of the property where the cart will be serviced.

B. The cart /toter permit ~~permits~~ may be transferred to other locations within the City of Reading. The licensed hauler must provide the new service address prior to relocating the cart / toter to the new address and a new permit will be issued without fee by the Codes Enforcement Division, which must be placed on the cart.

C. The permit shall be displayed on the cart / toter in a conspicuous location. The permit shall be issued for a period of 1 year.

D. The cost of the cart / toter permit shall be \$150 annually. The lessee shall provide to the City, upon request, a copy of the lease agreement if applicable and the agreement with the licensed hauler with schedule of pickup.

E. In the event the City incurs costs described herein, an accounting of such expenses shall be delivered along with a bill to the licensed hauler at which time payment to City shall be due and payable. This shall have no effect on other action the City may take such as issuing citations for violations of this Part.

F. Containers are permitted to be stored on private property without obtaining a permit.

(Ord. 38-2005, 6/13/2005, §1)

### **4. Trash Can or Receptacle Other than a Dumpster, Cart or Toter.**

A. Permits shall be obtained by a property owner as required to place a trash can or receptacle other than a dumpster, cart or toter permanently in the public right of way in the City of

Reading. The property owner applying for a can or receptacle permit shall list the address of the property that the can or receptacle services.

B. The permit shall be displayed on the can or receptacle in a conspicuous location or be available for inspection upon request. The permit shall be issued for a period of 1 year.

C. The cost of the cart permit shall be \$50 annually.

D. In the event the City incurs costs described herein, an accounting of such expenses shall be delivered along with a bill to the licensed hauler at which time payment to City shall be due and payable. This shall have no effect on other action the City may take such as issuing citations for violations of this Part.

**5. Property and Liability Insurance.** Prior to the issuance by the City of any permit or other authority to erect, a dumpster, cart, toter or receptacle in the public right-of-way, the licensed hauler or person requesting such a permit thereof shall execute a hold harmless agreement in such form as the City shall provide, guaranteeing to defend, protect and compensate the City as a result of any cause of action which may be brought or perfected against the City in connection herewith; or shall deposit with the Law Department of the City of Reading, a certificate of insurance acceptable to the City Solicitor covering such licensed hauler for property damages in an amount of not less than \$50,000 for any one claim, and not less than \$100,000 for claims arising from the same undertaking, as well as public liability insurance in an amount of not less than \$100,000 from any one claim and not less than \$300,000 for more than one claim arising from the same undertaking, such certificate shall be for continuous coverage unless canceled by the insurance company at which time the appropriate offices of the City shall be notified, in writing, by such insurance company.

#### **§20-205. Administrative Provisions.**

1. **Regulations.** Manager of the Codes Enforcement Division may promulgate such regulations as are necessary for the proper administration and enforcement of this Part.

2. **Administrative Authority.** This Part shall be enforced under the jurisdiction of the City Codes Enforcement Division. Enforcement is delegated to and shared with the Codes Enforcement Division, Police Department and the Department of Public Works.

3. **Penalty.**

##### **A. Placement Without Permit.**

Any person who has placed, places or causes to be placed any contained in the public right-of-way or view thereof without first obtaining authorization and a permit from the Codes Enforcement Division of the City of Reading upon notice by the City of Reading and failure to comply therewith shall be subject to the provisions and/or penalty as prescribed by this and any other applicable ordinance of the City of Reading.

##### **B. Removal of Container.**

(1) Any person who has placed, places or causes to be placed any container in the public right-of-way, when alternative storage and collection methods are available, shall immediately remove such container upon notice by the City and shall be subject to provisions and/or penalty as prescribed by this or other ordinances of the City of Reading.

(2) The failure of the licensed hauler to remove the container, upon notice by lessee or by the City to do so, shall be a violation of this Part and subject to provisions and/or penalty as prescribed by this or other ordinances of the City of Reading herein.

**C. Remedies.**

(1) All violations of this Part shall be corrected within 5 days of notice from the City, or be subject to the fines below:

(a) Whoever violates any provision of this Part shall, upon conviction thereof, in a summary proceeding, be fined a minimum of \$100.00 but not more than \$1,000.00. If costs and damages are incurred, restitution shall be awarded to the City in addition to any fines or other penalties awarded herein.

(b) Every violator of the provisions of this Part shall be deemed guilty of a separate offense for each and every day such violation shall continue and shall be subject to the penalty imposed by this Section for each and every separate offense.

(c) Noncompliance with any of the provisions contained within this Part may result in the removal of any and all trash receptacles by the City of Reading or its delegates.

*(Ord. 38-2005, 6/13/2005, §1)*

BILL NO. \_\_\_\_\_

AN ORDINANCE

**AN ORDINANCE AMENDING THE CODIFIED ORDINANCES OF THE CITY OF  
READING BY ADDING A NEW PART 11 TO THE ADMINISTRATIVE CODE –  
INITIATIVE AND REFERENDUM**

**THE CITY OF READING HEREBY ORDAINS AS FOLLOWS:**

**SECTION 1.** Amending the Codified Ordinances by adding a new Part 11 to the Administrative Code – Initiative and Referendum, as attached in Exhibit A.

**SECTION 2.** This ordinance shall be effective ten (10) days after its adoption and approval by the Mayor, or repassage by City Council over the Mayor's veto, in accordance with Section 219 of the City of Reading Home Rule Charter, or as set forth in Section 221 of the City of Reading Home Rule Charter.

Enacted \_\_\_\_\_, 2007

\_\_\_\_\_  
President of Council

Attest:

\_\_\_\_\_  
City Clerk

**(Council Staff)**

Submitted to Mayor: \_\_\_\_\_  
Date: \_\_\_\_\_

Received by the Mayor's Office: \_\_\_\_\_  
Date: \_\_\_\_\_

Approved by Mayor: \_\_\_\_\_  
Date: \_\_\_\_\_

Vetoed by Mayor: \_\_\_\_\_  
Date: \_\_\_\_\_

**(Exhibit A)**

### **§1-1100 Declaration of Purpose:**

The City of Reading City Council recognizes the importance of protecting and promoting the ability of our citizens to participate in government through Initiative and Referendum. Since the change to Home Rule government there have been approximately 10 citizen petitions efforts. The lack of clear instruction on the circulation and signature verification of initiative and referendum petitions in the Charter has caused many procedural problems, resulting in court challenges and legal fees to both the City and citizen groups. Therefore, through the enactment of this ordinance, City Council sets out regulations pertaining to the circulation and signing of initiative and referendum petitions to assist Reading voters with their rights to participation provided by the Home Rule Charter.

### **§1-1101 Definitions**

**Affidavit** – a written declaration or statement of facts, made voluntarily taken and signed before a notary public.

**Petition** - an initiative or referendum petition for ordering a measure to be submitted to City Council and/or the voters.

**Petitioners Committee** – a group of 5 registered voters responsible for circulating and filing the petition with the City Clerk's Office in proper form.

**Petition Blanks** – forms prepared by the City Clerk's Office containing a petition with a serial number, a Circulators Affidavit, and the full copy of the ordinance proposed for enactment or repeal.

**Regular election** – a primary or general election conducted by the Berks County Department of Elections,

### **§1-1102. Initiative and Referendum.**

A. **Initiative.** The qualified voters of the City shall have the power to propose ordinances to the Council. If the Council fails to adopt such an ordinance, the initiative process may be commenced giving the qualified voters of the City the opportunity to adopt or reject said ordinance at a City election. (*Charter*, 11/3/1993, §1102)

B. **Referendum.** The qualified voters of the City shall have the power to require reconsideration by the Council of any adopted ordinance. If the Council fails to repeal an ordinance so reconsidered, the referendum process may be commenced giving the



qualified voters of the City the opportunity to approve or reject said ordinance at a City election. (*Charter*, 11/3/1993, §1102)

**§1-1103. Initiative and Referendum; Commencement of Proceedings; Petitioners Committee; Affidavit.**

A. Any five qualified voters of the City may commence initiative or referendum. A qualified voter is a legal resident of the City of Reading who is registered and constitutionally entitled to vote in Pennsylvania.

B. A qualified voter shall obtain a Petitioner's Committee Affidavit and Petition Forms from the City Clerk in the Council Office during regular business hours.

C. The Petitioner's Committee Affidavit shall state the names and addresses of 5 qualified voters who will constitute the Petitioner's Committee and be responsible for circulating the petition and filing it in proper form, and specifying the address to which all notices to the committee are to be sent, and setting out in full the proposed initiative ordinance or the ordinance sought to be reconsidered.

D. In case of referendum, such an Petitioner's Committee Affidavit must be filed within 10 days of the adoption of the ordinance

E. Within 5 days after the Petitioner's Committee Affidavit is filed and validated, the City Clerk shall issue the appropriate petition blanks to the petitioners. (*Charter*, 11/3/1993, §1103)

**§1-1104. Form and Content**

The form and content of each petition pack shall be prepared as follows:

1. Each petition shall be uniform in size and style on 8 ½ x 11 paper, marked sequentially and/or contain a serial number.
2. Each petition pack shall contain a one petition.
3. Have an Affidavit of Circulator, as defined in Section 1-1105 below.
4. Contain complete text of the initiative ordinance being considered or the ordinance to be considered for repeal by referendum, as stated in Section 1-1106 or 1-1107 below.
5. Contain no more than 20 signature lines for the printed name, address, ward, precinct, signature of each person signing the petition, and the date signed.
6. Contain a Warning Statement advising that it is unlawful for anyone to sign any initiative or referendum petition with any name other than his/her own, or to

knowingly sign his/her name more than once for the same proposal, or to sign such petition when he/she is not a legal voter in the City of Reading.

7. No corrections, additions or alterations shall be made to the form of all petitions issued by the City Clerk to the Petitioner's Committee.

Any petition not following the form and content set out above shall be declared invalid.

**§1-1105. Affidavit of Circulator.** Each paper of a petition shall have attached to it upon filing a notarized affidavit executed by the circulator thereof stating that he or she personally circulated the paper, the number of signatures thereon, that all the signatures were affixed in the circulator's presence, and believes them to be valid and that each signer had an opportunity before signing to read the full text of the ordinance proposed or sought to be reconsidered. (*Charter*, 11/3/1993, §1102)

**§1-1106. Initiative Petitions.** All Initiative Petitions shall contain an initiative statement, describing the intent of the ordinance not exceeding 100 words, phrased in the form of a question that can be answered only with an affirmative or negative response. The initiative statement may be distinct from the petitioner's title of the measure, and shall express and give a true and impartial statement of the purpose of the measure. It shall not intentionally be an argument, nor likely to create prejudice, either for or against the measure. This statement shall be delivered to the City Clerk at the time the request for the Petitioner's Committee Petition form is requested. Each petition shall also have attached to it the full body of the initiative ordinance.

**§1-1107. Referendum Petitions.** All Referendum Petitions shall contain the title of the bill enacted by City Council as well as the bill number and date of enactment of the bill sought to be repealed. Each petition shall also have attached to it the full body of the bill sought to be repealed.

**§1-1108. Signatures.** Initiative and referendum petitions must be signed in ink or indelible pencil by 2000 qualified voters of the City of Reading.

**§1-1109. Circulation of Petitions.** The Petitioner's Committee shall be responsible for instructing circulators on the regulations and guidelines for circulating petitions, as contained herein.

A. All circulators must reside in the City of Reading and be registered to vote as defined in §1-1103 A above.

B. Each person collecting signatures must allow any person to review the text of the initiative ordinance or ordinance to be reconsidered.

C. Each signature collected must be personally witnessed by the circulator.

D. The circulator must complete the Affidavit of Circulator before a Notary Public after all the signatures on the sheet have been collected.

E. Circulators must not attempt to obtain signatures of persons knowing that the person signing the petition is not qualified to sign it.

F. Circulators must not offer money or any thing of value to another person or threaten a person to sign or not to sign a petition, nor shall they sell or offer to sell signature sheets.

G. Circulators must not accept compensation to circulate a petition that is based on the number of signatures obtained.

H. Any person violating the circulator regulations shall be charged in accordance with the applicable offense sections of the Elections Code 25 P.S. §2601 et seq.

**§1-1110. Time for Circulating and Filing Referendum Petitions.** Referendum petitions must be circulated and filed within 35 days after the filing of the Petitioner's Committee Affidavit. The City Clerk shall only accept petitions filed by the Petitioner's Committee. The City Clerk shall not accept any petitions submitted by any other circulators, representatives or agents thereof.

**§1-1111. Time for Circulation and Filing Initiative Petitions.** Initiative petitions must be circulated and signed within a period of 65 days from the date of the filing of the Petitioners Committee Affidavit with the City Clerk. The City Clerk shall only accept petitions filed by the Petitioner's Committee. The City Clerk shall not accept any petitions submitted by any other circulators, representatives or agents thereof.

**§1-1112. Referendum Petitions; Suspension of Effect of Ordinance.**

When a referendum petition is filed with the City Clerk, the ordinance sought to be reconsidered shall be suspended from taking effect. Such suspension shall terminate when:

A. There is a final determination of insufficiency of the petition; or

B. The Petitioner's Committee withdraws the petition; or

C. Council repeals the ordinance; or

D. Thirty-five days have elapsed since the issue of the affidavit and the required number of signatures has not been secured. (*Charter*, 11/3/1993, §1106)

### **§1-1113. Submission of Petitions**

Before submitting the signature sheets for verification, the Petitioner's Committee must stack petition packs beginning with the number 1 and continue sequentially until all sheets petitions issued are accounted for. The petitions submitted must contain at least 2000 original signatures. The Petitioner's Committee must also include a letter stating how many signatures they purport to have. The City Clerk shall advise the Petitioner's Committee of their ability to obtain the necessary number of signatures or make other corrections in accordance with Section 1-1113 of this part herein.

### **§1-1114. Initiative and Referendum; Procedure after Filing.**

#### **A. Sufficiency of Petitions – Determination**

No petition for referendum shall be filed with the City Clerk unless it contains the required number of signatures. Upon filing of a petition for initiative or referendum with the City Clerk, the City Clerk shall make an initial face value determination of sufficiency and report the results thereof to the City Council within two (2) days of the date of such filing. The City Clerk may make its determination of sufficiency of the petitions and the signatures contained thereon as stated hereafter and in Section 1-1115 below.

B. After completing the initial face value determination, the City Clerk may complete a verification process to find whether signatures of individuals on the petitions are insufficient in the following categories:

1. Address shown by signer is not located within the city limits of the City of Reading;
2. Any signature appearing on the petition more than once, in which event all signatures of said individual shall be deleted except one;
3. More than one individual signature is on a signature line, in which event the line shall count as one;
4. Signature lines containing incomplete information or information which was not completed by the elector or a person qualified to assist the elector shall not be counted;

5. Signature and information that does not match the Berks County Voter Registration Records;
6. Signatures of individuals who are not registered electors in the city.
7. Each petition pack shall only contain one petition; multiple petitions may not be attached to a single ordinance and circulators affidavit.

C. The petition may not be removed and no signature may be removed or deleted by a signer, circulator, or representative of a circulator or signer after the petitions have been filed with the City Clerk. Copies of the petitions submitted will not be provided to the Petitioner's Committee by the City.

**§1-1115. Certificate of Clerk; Amendment.** Within 20 days after the petition is filed, the City Clerk shall complete a certificate as to its sufficiency, specifying, if it is insufficient, the particulars wherein it is defective and shall promptly send a copy of the certificate to the Petitioner's Committee by registered mail.

A petition certified insufficient for lack of the required number of valid signatures may be amended once if the Petitioner's Committee files a notice of intention to amend it with the City Clerk within 2 days after receiving the copy of the certificate and files a supplementary petition upon additional papers to be supplied by the City Clerk within 10 days after receiving the copy of such certificate.

Such supplementary petition shall comply with the requirements of this Chapter and within 5 days after it is filed, the City Clerk shall complete a certificate as to the sufficiency of the petition as amended and promptly send a copy of such certificate to the Petitioner's Committee by registered mail as in the case of an original petition.

If a petition or amended petition is certified insufficient and the Petitioner's Committee does not elect to amend or request Council review under Section 1-1114 within the time required, the City Clerk shall promptly present their certificate to the Council and the certificate shall then be a final determination as to the sufficiency of the petition.  
(*Charter, 11/3/1993, §1102*)

**§1-1116 Council Review.** If a petition has been certified insufficient and the Petitioner's Committee does not file notice of intention to amend it, or if an amended petition has been certified insufficient, the committee may, within 2 days after receiving the copy of such certificate, file a request that it be reviewed by the Council. The Council shall review the certificate at its next meeting following the filing of such request and approve or disapprove it, and the Council's determination shall then be a final determination as to the sufficiency of the petition. (*Charter, 11/3/1993, §1102*)

**§1-1117. Court Review; New Petition.** A final determination as to the insufficiency of a petition shall be subject to court review. A final determination of insufficiency, even if sustained upon court review, shall not prejudice the filing of a new petition for the same purpose. (*Charter*, 11/3/1993, §1105)

**§1-1118. Initiative and Referendum; Action on Petitions.**

**A. Action by Council.** When an initiative or referendum petition has been finally determined sufficient, the Council shall promptly consider the proposed initiative ordinance in the manner provided in Article II of the Charter or reconsider the referred ordinance by voting its repeal. If the Council fails to adopt a proposed initiative ordinance without any change in substance within 60 days or fails to repeal the referred ordinance within 30 days after the date the petition was finally determined sufficient, it shall submit the proposed or referred ordinance to the voters of the City. (*Charter*, 11/3/1993, §1102)

**B. Submission to Voters.** The question shall be placed on the ballot at the next primary, municipal or general election occurring at least 35 days after final Council action. Copies of the proposed and referred ordinance shall be made available at the voting precincts. (*Charter*, 11/3/1993, §1102)

**C. Withdrawal of Petitions.** An initiative or referendum petition may be withdrawn at any time prior to the 45th day preceding the day scheduled for a vote of the City by filing with the City Clerk a request for withdrawal signed by at least four members of the Petitioner's Committee. Upon the filing of such request, the petition shall have no further force of effect and all proceedings thereon shall be terminated. (*Charter*, 11/3/1993, §1107)

**§1-1119. Initiative and Referendum; Results of Election.**

**A. Initiative.** If a majority of the qualified voters voting on a proposed initiative vote in its favor, it shall be considered adopted upon certification of the election results and shall be treated in all respects in the same manner as ordinances of the same kind adopted by the Council. If conflicting ordinances are approved at the same election, the one receiving the greatest number of affirmative votes shall prevail to the extent of such conflict.

**B. Referendum.** If a majority of the qualified voters voting on a referred ordinance vote against it, it shall be considered repealed upon certification of the election. (*Charter*, 11/3/1993, §1108)

**§1-1120. Initiative and Referendum; Limitations.**

**A. Default of Initiative and Referendum.** Any ordinance proposed or sought to be reconsidered which is rejected by the qualified voters in an election cannot be resubmitted for initiative and referendum for a period of 2 years from the date of the election where the ordinance was defeated. (*Charter, 11/3/1993, §1102*)

**B. Repeal or Modification of Initiative and Referendum by Council.** The Council shall take no action to repeal or significantly modify an ordinance adopted by initiative and referendum within a period of 2 years from the date of the election at which the ordinance was approved. (*Charter, 11/3/1993, §1102*)

**C. Limit on the Number of Initiative and Referendum.** No more than two initiative and two referendum measures may be placed on the ballot at any primary, municipal or general election. The first two initiative and referendum measures which are filed with the City Clerk will be the only ones allowed on the ballot. (*Charter, 11/3/1993, §1109*)



**City of Reading City Council  
Staff Report**

**Agenda Item:** Sidewalk Sale Ordinance      **From:** Linda A. Kelleher, City Clerk  
**Briefing No.:** 4-2007      **Date:** May 9, 2007

**SUBJECT:** Sidewalk Sale Ordinance

**SUMMARY:** The need for a Sidewalk Sale Ordinance was raised by the Codes Manager and Codes Administrator. The issue was researched by the City Clerk. Several good examples were obtained from Ft. Lauderdale and Jacksonville (Florida), Charleston NC, Lancaster PA, etc. The ordinance was drafted in consultation with the Codes Administrator. Current City law prohibits sidewalk sales due to public health and safety concerns. The enactment of a Sidewalk Sale Ordinance will encourage commercial growth that contributes to a vibrant and attractive community.

This ordinance provides opportunity for Sidewalk Sales in the Commercial Core zoning district falling roughly between North 2<sup>nd</sup> and North 7<sup>th</sup> and Franklin and Washington Streets (complete detail can be found on the Zoning Map located on the City website) and provides for the following:

- Allows businesses to apply for a permit (revocable) that allows them to sell merchandise on the sidewalk in front of their business – \$275 per calendar year for 52 sidewalk sales per year
- Sale of indoor furniture, appliances, mattresses and similar ware is prohibited
- Consent from abutting properties required
- No outdoor lighting or music is permitted
- Application to be approved by Codes Enforcement with sign off from Public Works, Fire and Police
- Requires Hold Harmless Agreement to indemnify the City
- Provides for Special Sales open to all retail merchants within a specific neighborhood not to exceed 7 days, provided that they comply with the terms of this ordinance



- Defined display design standards
- Requires Council approval of all sidewalk sale permits located outside the Commercial Core zoning district
- Minimum and maximum fines for noncompliance

This ordinance was reviewed and discussed by the Public Safety Committee. The Committee recommended a few minor changes, which are reflected in the ordinance accompanying this paper.

**RECOMMENDATIONS:** The Public Safety Committee recommends the approval of the Sidewalk Sale Ordinance.

**ATTACHMENTS:** Sidewalk Sale Ordinance

Bill No. \_\_\_\_\_

**AN ORDINANCE AMENDING THE CITY OF READING CODIFIED ORDINANCES BY  
ADDING PART 16 SIDEWALK SALES TO CHAPTER 10 HEALTH AND SAFETY  
AND ADDING THE PERMIT FEES TO THE CITY OF READING FEE SCHEDULE**

**THE COUNCIL OF THE CITY OF READING HEREBY ORDAINS AS FOLLOWS:**

**SECTION 1:** Amending the Codified Ordinances by adding Part 16 Sidewalk Cafes to Chapter 10 Health and Safety as attached in Exhibit A and adding the permit fees to the City of Reading Fee Schedule.

**SECTION 2.** This ordinance shall be effective ten (10) days after its adoption and approval by the Mayor, or repassage by City Council over the Mayor's veto, in accordance with Section 219 of the City of Reading Home Rule Charter, or as set forth in Section 221 of the City of Reading Home Rule Charter.

Enacted \_\_\_\_\_, 2007

\_\_\_\_\_  
President of Council

Attest:

\_\_\_\_\_  
City Clerk

Submitted to Mayor: \_\_\_\_\_

Date: \_\_\_\_\_

Received by the Mayor's Office: \_\_\_\_\_

Date: \_\_\_\_\_

Approved by Mayor: \_\_\_\_\_

Date: \_\_\_\_\_

Vetoed by Mayor: \_\_\_\_\_

Date: \_\_\_\_\_

## **Exhibit A**

### **SIDEWALK SALES**

**§10-1600. Declaration of Purpose.** The City of Reading City Council encourages an attractive, functional and economically vital community and shopping areas that are safe and pleasant environments to live near and to do business within. Council recognizes that commercial development is a major identifying feature in a community, offering impressions to residents and visitors alike of the quality of life available. It is Council's intent to encourage commercial growth that contributes to a vibrant and attractive community. As the current Code does not allow Sidewalk Sales due to public health and safety concerns, Council believes that these activities can greatly contribute to a pedestrian friendly community if they conform to specific public health, and safety requirements defined herein.

**§10-1601. Sidewalk Sales and Displays.** No person shall engage in the selling or display for sale of merchandise of any kind on, over or upon any sidewalk, without first applying for and obtaining a permit from the City of Reading Codes Enforcement Office and then operating within the terms and conditions of all applicable City ordinances. The Sidewalk Sale Permit enables the person or business to operate 52 sidewalk sales per calendar year.

**§10-1602. Definitions.** For the purpose of this article, the following terms shall have the following meanings:

**ABUTTING PROPERTY** -- Property contiguous to a public street right-of-way on which a sidewalk cafe will be operated under the terms of this article.

**CITY ENGINEER** -- The Director of Public Works or his authorized representative.

**COMMERCIAL CORE** - is the zoning district defined as the downtown center for government services, offices, shopping, hotels, entertainment and cultural activity.

**HEALTH OFFICER** -- The Health Officer of the City of Reading Codes Enforcement Office or his authorized representative

**OWNER** -- Includes any owner of fee simple title, part owner, joint owner, tenant in common, tenant in partnership, joint tenant or tenant by the entirety of the whole of the land contiguous to the street right-of-way on which a sidewalk cafe is to be operated under the authority of this article.

**PEDESTRIAN WALKWAY** -- That portion of a sidewalk area which is free of any obstruction, fixture or appurtenance and is used for pedestrian travel.

**PERSON** -- Includes a partnership, corporation, association, trust, estate or other legally recognized entity, as well as an individual.

**PUBLIC SERVICE FACILITY** -- A public telephone, mailbox, bench or other facility provided for the use of the general public.

**SIDEWALK** -- Any paved area between the curblin and a structure, whether publicly or privately owned, which is used by the public or open to use by the public.

**SIDEWALK SALE** - retail or wholesale selling of merchandise using racks, table or free-standing merchandise outside and/or adjacent to buildings and structures, and includes sales in areas such as sidewalks, walkways and parking lots. Sidewalk sales DO NOT include the sale and consumption of food and drink in open-air, cafe-style seating with tables and chairs.

**STREET RIGHT-OF-WAY** -- The entire right-of-way of a public highway, public alley or public road, including the designated sidewalk areas

#### **§10-1603. Sidewalk Sale - Issuance of Permit; Display.**

It shall be unlawful for any person, firm, corporation, transient merchant, church, club, charitable institution, hawker or peddler to vend, sell or dispose of or offer to vend, sell, dispose of or display, any goods, wares, merchandise, produce or vegetables on any public walk, street, alley or anywhere within the City of Reading without registering with and receiving a permit from the City Codes Enforcement Office.

The Codes Enforcement Office is hereby authorized to grant revocable permits for the use of the sidewalks for sidewalk sales in the Commercial Core Zoning District upon the following terms and conditions. Registration shall be on a permit form approved by the City Council. When the Codes Enforcement Office has approved the issuance of a sidewalk sales permit, the applicant shall be issued a permit. The permit shall contain the information required on the application, the expiration date, and one of the photographs submitted with the application. The permit shall be carried by the applicant at all times when engaged in sidewalk sales and shall be exhibited for inspection to any person approached for purposes of sidewalk sales.

#### **§10-1604. Permitting for Sidewalk Sales Outside the Commercial Core.**

Applications for sidewalk cafes outside the Commercial Core zoning district shall be submitted to the Codes Enforcement Office in accordance with the regulations contained herein. Such applications shall be forwarded to City Council for approval.

**§10-1605. Sidewalk Sale Prohibited Conduct.** No vendor or person shall exhibit, display, offer for sale or sell any indoor furniture, appliances, mattresses or similar wares, or merchandise or place or allow any to stand or remain on the sidewalks in the City of Reading, unless they are set out for trash collection in accordance with the zoned trash collection schedule.

**§10-1606. Sidewalk Sale Permit Term and Fees.**

- A. The term of each sidewalk sale permit shall be specified on the permit which is issued and shall not exceed 52 events per year.
- B. The permit fee to be charged is \$250 per year.
- C. There shall be no prorating or rebate of the annual permit fee.

**§10-1607. Sidewalk Sale Display Standards.** The Codes Enforcement Office is hereby authorized to grant revocable permits for the use of the sidewalk for the display for sale of merchandise, flowers, floral arrangements and ornamental shrubbery not prohibited herein upon the following terms and conditions:

- A. No more than 52 sidewalk sales can occur during each calendar year.
- B. The permit and regulated activity shall be valid only during a single calendar year
- C. The permitted activity shall be conducted only as an accessory to a business establishment lawfully operating on the first floor of the premises, on the sidewalk in front of the principal place of business of such establishment and by the entity which operates such establishment. All sales shall be conducted within such establishment. No cash register or other facility for the exchange of currency or otherwise receiving payment for goods and services shall be permitted on the sidewalk.
- D. The applicant shall have the consent of the owner and lessee, if any, of the premises in front of which the permitted activity is to be conducted and the consent of each abutting property owner.
- E. There shall be no less than eight feet from the curbline to the front of the nearest structure.
- F. No sidewalk display shall be nearer than three feet zero inches to the curb, except that if the sidewalk is nine feet zero inches or more in width, then the distance from the curb shall be not less than 1/3 of the width of the sidewalk with a maximum of two rows.

G. The applicant shall at all times maintain free and clear from all obstruction an aisle not less than three feet in width providing access to any establishment fronting on said sidewalk.

H. No permanent structure may be affixed to the sidewalk or any building. The applicant shall be responsible for any damage caused to any sidewalk or public property.

I. The sidewalk use shall not interfere with access to any public service facility, create a nuisance or fire hazard.

J. At least one trash receptacle shall be provided by the business or person and the premise shall be kept letter free.

K. No outdoor lighting or live or mechanical music shall be permitted.

L. The sidewalk display shall be permitted only during the hours the business is open to the public or between the hours of 9 a.m. and 5 p.m.

M. The applicant shall agree to indemnify and save harmless the City of Reading, its officers, agents, attorneys and employees from and against any claim of loss, liability or damage by any person arising as a result of the applicant's operation of the sidewalk use.

N. The applicant shall obtain and maintain in full force and effect throughout the term of the permit a policy of general liability insurance, which such policy shall name the City of Reading, its officers, agents, attorneys and employees as additional insured, have a combined single limit of not less the \$1,000,000 and contain a provision prohibiting its cancellation except upon 20 days notice to the City of Reading. The applicant shall file with the Codes Enforcement Office, prior to the issuance of the permit, a certificate evidencing the requisite insurance.

O. The applicant shall file with the Codes Enforcement Office, prior to the issuance of the permit, the permit fee as set forth herein.

P. The permit fee must be made at time of application.

Q. Any other conditions required or prescribed by the Codes Enforcement Office shall be reasonable and necessary to protect the health, welfare and safety of the public, including the denial of the application.

R. The owner/operator must submit with the application the name and street address of the owner of the abutting properties if not the same person along with:

- (1) A description of the owner of the abutting property, if other than a natural

person, including the legal status (corporation, partnership, etc.) and a general description of the type(s) of business operated on the abutting property.

- (2) Written authority in the form of a power of attorney from the owner to submit the application if the applicant is not the owner of the abutting property.

**§10-1608. Special Sidewalk Sales.** Anything in this article to the contrary notwithstanding, the City of Reading Codes Enforcement Office may permit the selling and display for sale of merchandise on, over or upon the sidewalk at any location within the City for a period not to exceed seven days in conjunction with any organized sidewalk sales days open to all retail merchants within the a specific neighborhood or City block, as long as the affected merchants comply with the other terms of this ordinance and other applicable City ordinances.

**§10-1609. Sidewalk Sale Application Requirements.**

Each applicant for a permit under this article shall submit three copies of his application and plans for the sidewalk sale to the Codes Enforcement Office, who shall issue a permit upon compliance with the terms and conditions of this article. Application must be made within 14 business days prior to the intended start date. Applications for sidewalk sale permits shall include the following:

- A. The name and street address of the applicant.
- B. The name and street address of the owner of the business and owner of the underlying freehold and/or abutting property owner if not the same person and:
  - (1) A description of the owner of the abutting property, if other than a natural person, including the legal status (corporation, partnership, etc.) and a general description of the type(s) of business operated on the abutting property.
  - (2) Written authority in the form of a power of attorney from the owner to submit the application if the applicant is not the owner of the abutting property.
- C. The name and street address of the registered agent for the service of process, if the applicant represents a corporation; or the names and street addresses of the officers or partners, if the applicant represents an association, partnership or other entity.
- D. The name and street address of the operator, manager or other person responsible for the operation of the sidewalk sale.
- E. The name under which the sidewalk sale will be operated.
- F. A copy of the current City Business License and Zoning Permit
- G. A site plan drawn to a scale of 1/2 inch equals one foot, showing:
  - (1) The entirety of the sidewalk abutting the property of the owner;
  - (2) The frontage of the property proposed for the sidewalk sale;
  - (3) All abutting properties;
  - (4) All existing sidewalk features, including but not limited to trees, utility poles,

- sign poles, fire hydrants, permanent litter receptacles, telephone booths, news vending racks and mailboxes;
- (5) Any bus stops within 25 feet on either side of the proposed sidewalk sale area; and
  - (6) Detailed drawings of legible proportions showing the limits of the proposed sidewalk sale site, the design dimension and proposed location of all proposed temporary structures (i.e., canopies, umbrellas, planters, landscaping, tables, chairs, all exterior lighting, electrical outlets, etc.), the proposed pedestrian walkway and the side and front elevations of the proposed sidewalk sale area.
- H. A copy or copies of the certificate or certificates of insurance required to be provided.

**§10-1610. Sidewalk Sale - Review of Application.**

- A. Before any permit is issued pursuant to this article, the plans submitted to the Codes Enforcement Office pursuant to this article shall be referred to and approved by the Public Works Director, Reading Police Department and Department of Fire and Rescue Services.
- B. The Codes Enforcement Office shall determine if the applicant has:
  - (1) Obtained the approval of the Public Works Director and Building Official for any railing, flooring or other support or enclosure used in the assembly, operation or enclosure of the sidewalk sale. No such railing, flooring or other support or enclosure shall be considered an erection of, addition to or a structural alteration of a building or structure under applicable City Building Code unless such railing, flooring or other support or enclosure is permanently attached to such building or structure.
  - (2) Obtained the approval of the Historical Architectural Review Board (HARB) if the sidewalk sale is located within any area designated as part of an historic district and if the applicant proposes any facilities which are under the jurisdiction of the HARB. The HARB shall use the review criteria for such plans relating to a sidewalk sale's specific location, size and structure, for its compatibility of scale, design and alteration in the plans for a sidewalk sale approved by the HARB requires reapproval from the HARB. Once approval is granted by the HARB, the approved plans are valid and do not require annual reapproval. The HARB shall only review applications which have the written approval from the Public Works Director as specified herein.
  - (3) Complied with all rules, regulations and specifications of this article.
- C. The Codes Enforcement Office may impose any other restriction on the location, size or design of the sidewalk sale that, in his sole judgment, protects the health, safety and welfare of the public.



#### **§10-1611. Conditions for Issuance of Permit.**

- A. Upon approval by the Codes Enforcement Office of the plans submitted by the applicant and upon the applicant furnishing to the City of Reading the following, the Codes Enforcement Office shall issue a permit, valid through the end of the calendar year:
  - (1) A hold-harmless agreement executed by the applicant and indemnifying the City against loss, including costs and expenses, resulting from injury to person or property as a direct or indirect result of the operation of the sidewalk cafe. Said hold-harmless agreement shall be subject to the approval of the City Solicitor.
  - (2) Proof of liability insurance in the amount of \$100,000 per individual and \$300,000 per occurrence.
- B. Sidewalk sales permits are not transferable. Changes in ownership/operation require reapplication for a permit.

#### **§10-1612. Removal of Improvements.**

- A. If the City incurs any costs in removing any equipment or improvements from a sidewalk sale for the following reasons: the establishment failed to remove equipment at the close of the business day, the establishment went out of business or the establishment failed to renew its permit, within 30 days of the close of the year, the City shall remove and store all equipment and bill the property owner for the actual costs of labor, materials, equipment or any other item, service or expense incurred by the City to correct such violation, plus any additional administrative fees. The equipment removed shall remain in the City's possession until the bill from removal and any fines or fees are paid in full.
- B. Any bill for such removal of equipment undertaken pursuant to this chapter shall be billed to and paid by the property owner within 60 days. Upon failure of the property owner to pay the amounts due within 60 days, the City shall assess this uncollected debt on the property taxes of this building.

#### **§10-1613. Permit Renewal.**

A sidewalk sale permit may be renewed annually, upon review of the renewal application and complaint history, if any, which shall be provided by the Codes Enforcement Office, Reading Police Department, Department of Public Works, and Department of Fire and Rescue Services. Each agency shall provide to the Codes Enforcement Office copies of any inspection results, complaints filed and citations issued concerning the sidewalk sale under consideration. The renewal fee for the permit shall be as stipulated in §10-1606 above.

**§10-1614. Written Notice of Violations; Suspension of Permit.**

Upon finding by the Codes Enforcement Office that an applicant has violated any provisions of this article, the Codes Enforcement Office shall give written notice to the applicant to correct said operational violation. Upon failure to correct said operational violation within the time frame specified, the Codes Enforcement Office may take appropriate action, as necessary, to maintain the Pedestrian Walkway. The Codes Enforcement Office may suspend the applicant's permit issued pursuant to this article, as well as pursue prosecution in accordance with the requirements herein. The Codes Enforcement Office shall, in his/her sole judgment, give a violator reasonable time to repair any structural damage or physical violation of any provision of this article. An appeal before City Council shall be accorded if requested.

**§10-1615. Violations and penalties; effect on eligibility for license.**

- A. Whoever violates any provisions of this article shall, upon conviction thereof in a summary proceeding, be fined not less than \$200 and not more than \$1,000 for each offense, to be collected as other fines and costs are by law collectible, or imprisoned for not more than 90 days, or both. Each day during which a violation occurs shall constitute a separate offense.
- B. Any person who is convicted of a violation of any of the provisions of this article shall have his permit suspended for one full year and shall not be eligible for another permit until the expiration of one full year.
- C. Any person who fails to remove a sidewalk sales materials at the close of each business day, as provided for in §10-1615, shall not be eligible for a permit in any following year.
- D. Failure to observe any of the conditions set out herein is grounds for revocation of a permit. Prior to such revocation, the Codes Enforcement Office shall give 10 days' written notice to the permittee of his violation of or his failure to observe a general condition as set out above. If the permittee requests a hearing prior to the expiration of that ten-day notice period, the City Council shall hold a hearing to determine if the license should be revoked. The permittee may present evidence in his own behalf if he so desires. The decision in regard to revocation may be appealed to the City Council. If the permittee fails to request such a hearing, the revocation shall become effective upon the expiration of the ten-day notice period. If a permit granted under this section is revoked, all tables, chairs and other appurtenances used as a part of the sidewalk sale shall be immediately removed from the sidewalk.
- E. This article and the foregoing penalties shall not be construed to limit or deny the right of the City or any person to such equitable or other remedies as may otherwise be available with or without process of law.

**§10-1616. Determination on Application.**

The Codes Enforcement Office shall grant or deny an application for a permit pursuant to this article within seven days of its complete submission.

**§10-1617. Reservation of Rights.**

Neither the adoption of this article nor the granting of any permit pursuant hereto shall be construed as a waiver of any right, privilege or immunity of the City of Reading with respect to streets and sidewalks, whether express or implied.

**§10-1618. Penalties for Offenses**

Any person who shall violate any of the provisions of this article shall be liable to prosecution and shall, upon conviction thereof, be liable to a fine that shall not exceed \$1000, imprisonment for not more than 15 days, or both such fine and imprisonment.



## City of Reading City Council Staff Report

**Agenda Item:** Sidewalk Café Ordinance      **From:** Linda A. Kelleher, City Clerk  
**Briefing No.:** 4-2007      **Date:** May 9, 2007

**SUBJECT:** Sidewalk Café Ordinance

**SUMMARY:** The need for a Sidewalk Café Ordinance was raised by the Codes Manager and Codes Administrator. The issue was researched by the City Clerk. Several good examples were obtained from St. Petersburg and Jacksonville Florida, Charleston NC, Austin Texas, New Rochelle NY, etc. The ordinance was drafted in consultation with the Codes Administrator. Current City laws prohibit sidewalk cafes due to public health and safety concerns. The enactment of the Sidewalk Café Ordinance would provide for sidewalk café activities which will greatly contribute to a pedestrian friendly community and encourage downtown revitalization.

This ordinance will allow sidewalk cafes in the Commercial Core Business zoning district falling roughly between North 2<sup>nd</sup> and North 7<sup>th</sup> and Franklin and Washington Streets (complete detail can be found on the Zoning Map located on the City website) and provides for the following:

- Operation of Sidewalk Cafes at businesses generating 65% of their annual income from food sales between April 15<sup>th</sup> – October 15<sup>th</sup> – during the hours that the restaurant's kitchen is open.
- Permit (revocable) to be issued by the Codes Office, with sign offs by RPD, Fire and Public Works – \$275 Large Café and \$25 Mini Café
- Requires approval of abutting businesses
- Requires conformance with LCB Laws when serving alcohol
- Requires trash receptacles and compliance with Noise Ord and other applicable City laws
- Defines design standards and regulations

- Requires Council approval for cafes desired outside the Commercial Core Business Zoning District
- Requires all food preparation and heating to take place inside the restaurant
- Requires Hold Harmless Agreement indemnifying the City

The ordinance was reviewed and discussed by the Public Safety Committee at their 4-16 Meeting. The attached ordinance reflects some minor changes recommended by the Committee.

**RECOMMENDATIONS:** Public Safety recommends the enactment of the Sidewalk Café Ordinance.

Bill No. \_\_\_\_\_

**AN ORDINANCE AMENDING THE CITY OF READING CODIFIED ORDINANCES BY  
ADDING PART 15 SIDEWALK CAFES TO CHAPTER 10 HEALTH AND SAFETY  
AND ADDING THE PERMIT FEES TO THE CITY OF READING FEE SCHEDULE.**

**THE COUNCIL OF THE CITY OF READING HEREBY ORDAINS AS FOLLOWS:**

**SECTION 1:** Amending the Codified Ordinances by adding Part 15 Sidewalk Cafes to Chapter 10 Health and Safety as attached in Exhibit A and by adding the permit fees to the City of Reading Fee Schedule.

**SECTION 2.** This ordinance shall be effective ten (10) days after its adoption and approval by the Mayor, or repassage by City Council over the Mayor's veto, in accordance with Section 219 of the City of Reading Home Rule Charter, or as set forth in Section 221 of the City of Reading Home Rule Charter.

Enacted \_\_\_\_\_, 2007

\_\_\_\_\_  
President of Council

Attest:

\_\_\_\_\_  
City Clerk

Submitted to Mayor: \_\_\_\_\_  
Date: \_\_\_\_\_

Received by the Mayor's Office: \_\_\_\_\_  
Date: \_\_\_\_\_

Approved by Mayor: \_\_\_\_\_  
Date: \_\_\_\_\_

Vetoed by Mayor: \_\_\_\_\_  
Date: \_\_\_\_\_

## **EXHIBIT A**

### **PART 15**

#### **SIDEWALK CAFES**

**§10-1500. Declaration of Purpose.** The City of Reading City Council encourages an attractive, functional and economically vital community and shopping areas that are safe and pleasant environments to live near and to do business within. Council recognizes that commercial development is a major identifying feature in a community, offering impressions to residents and visitors alike of the quality of life available. It is Council's intent to encourage commercial growth that contributes to a vibrant and attractive community. As the current Code does not allow Sidewalk Cafes due to public health and safety concerns, Council believes that these activities can greatly contribute to a pedestrian friendly community if they conform to specific public health, and safety requirements defined herein.

**§10-1501. Sidewalk Cafes.** No person shall engage in the operation of a sidewalk cafe, without first applying for and obtaining a permit from the City of Reading Codes Enforcement Office and then operating within the terms and conditions of all applicable City ordinances. The Sidewalk Café Permit enables a restaurant to have outdoor dining, consistent with the terms herein, between April 15<sup>th</sup> and October 15<sup>th</sup> of each calendar year.

**§10-1502. Definitions.** For the purpose of this article, the following terms shall have the following meanings:

**ABUTTING PROPERTY** -- Property contiguous to a public street right-of-way on which a sidewalk cafe will be operated under the terms of this article.

**COMMERCIAL CORE** - is the zoning district defined as the downtown center for government services, offices, shopping, hotels, entertainment and cultural activity.

**CITY ENGINEER** -- The Director of Public Works or his authorized representative.

**HEALTH OFFICER** -- The Health Officer of the City of Reading Codes Enforcement Office or his authorized representative

**MINI CAFE** - a sidewalk café comprised of bistro tables which seats no more than four persons, does not serve alcohol and is without service from wait staff.

**OWNER** -- Includes any owner of fee simple title, part owner, joint owner, tenant in common, tenant in partnership, joint tenant or tenant by the entirety of the whole of the land contiguous to the street right-of-way on which a sidewalk cafe is to be operated under the authority of this article.

**PEDESTRIAN WALKWAY** -- That portion of a sidewalk area which is free of any obstruction, fixture or appurtenance and is used for pedestrian travel.

**PERSON** -- Includes a partnership, corporation, association, trust, estate or other legally recognized entity, as well as an individual.

**PUBLIC SERVICE FACILITY** -- A public telephone, mailbox, bench or other facility provided for the use of the general public.

**RESTAURANT** -- A food service establishment where food is purchased and served in individual portions for consumption on the premises. This term shall not include an establishment which operates exclusively as a caterer, a commissary, a food processing establishment, a mobile food unit, a retail food store or a temporary food service establishment.

**SIDEWALK** -- Any paved area between the curbline and a structure, whether publicly or privately owned, which is used by the public or open to use by the public.

**SIDEWALK CAFE** -- An outdoor dining area operated by a restaurant, generating 65% of its annual revenue from food sales, serves alcohol, has tables that seat two or more patrons, provides wait staff for its patrons and is located on a sidewalk area or other designated public place and containing removable tables, chairs, plants and related appurtenances, which is not located on or does not encroach upon the pedestrian walkway as established under the provisions of this article. It shall not be enclosed by fixed walls and shall be open to the air, except that it may have a canopy. It may but is not required to abut its sponsoring restaurant.

**STREET RIGHT-OF-WAY** - The entire right-of-way of a public highway, public alley or public road, including the designated sidewalk areas

#### **§10-1503. Sidewalk Cafe - Issuance of Permit; Display.**

It shall be unlawful for any person, firm, corporation, transient merchant, church, club, charitable institution, hawker or peddler to vend, sell or dispose of or offer to vend, sell, dispose of or display, any food, goods, wares, merchandise, produce or vegetables on any public walk, street, alley or anywhere within the City of Reading without registering with the City Codes Enforcement Office and the Tax Division. The phrase



“sidewalk café” in this ordinance will be applied to both sidewalk cafes and mini-cafes unless otherwise stated.

#### **§10-1504. Sidewalk Cafes – Issuance of Permit, Display**

The Codes Enforcement Office is hereby authorized to grant revocable licenses for the use of the sidewalks for sidewalk cafes in the Commercial Core Zoning District upon the following terms and conditions. Registration shall be on a permit approved by the City Council. When the Codes Enforcement Office has approved the issuance of a sidewalk cafe permit, the applicant shall be issued a permit. The permit shall contain the information required on the application, the expiration date, and one of the photographs submitted with the application. The permit shall be carried by the applicant at all times when engaged in sidewalk café activities and shall be exhibited for inspection for any person.

A. The applicant shall comply with all of the terms and conditions for a sidewalk display license, set forth in this Part, including, without limitation, the indemnification, and insurance requirements.

B. The applicant shall delineate the cafe area with a removable physical barrier separating patrons from pedestrian traffic. The delineation and layout of the cafe area shall be consistent with the site plan submitted by the applicant.

C. No sidewalk cafe may be operated except:

(1) As an accessory to a restaurant or retail food store lawfully operating on the first floor of the premise.

(2) On the sidewalk in front of the principal place of business of such entity.

(3) By the entity which operates the restaurant or retail food store.

D. Sidewalk cafes shall operate only during the hours that the facilities kitchen is open for service, but not after 11 p.m.

E. Furnishings of a sidewalk cafe shall consist solely of readily removable umbrellas, covers, railings, tables, chairs, planters containing live plants, waste receptacles and accessories. Furnishings may not be attached, even in a temporary manner, to the sidewalk or other public property or to any building or structure. All furnishings shall be removed from the sidewalk and stored in an approved manner when the sidewalk cafe is not in operation.

F. All food must be prepared within the existing restaurant or retail food store upon which the cafe permit has been granted.

G. The applicant shall be responsible for obtaining, maintaining in full force and effect and complying with the terms and conditions of any permit which may be required under any other law or regulation for the serving of food or beverages, including alcoholic beverages, at a sidewalk cafe.

H. Sidewalk cafes, the public property on which they are located and the surrounding area shall at all times be kept free and clear of litter, debris and any substance that may damage the sidewalk or cause pedestrian injury.

I. The applicant shall maintain a sufficient number of receptacles for the disposal of waste, properly covered to prevent infestation by insects. Such receptacles shall be emptied as often as is necessary, but in no event less than once per day.

J. All sidewalk cafes and attendant facilities shall be inspected by the Codes Enforcement Office, or his designee and the Public Works Director, or his designee prior to the issuance of a sidewalk café permit.

K. Acceptance of a sidewalk cafe permit is an express acknowledgment and consent to the terms and restrictions set by this article and the Health Officer. The grant and usage of such license is a privilege, not a right, subject to reasonable restrictions as set out herein or as may be promulgated by the regulatory authority.

L. As an express condition of the acceptance of a permit hereunder, the recipient agrees to police for trash and debris an area extending 15 feet in each direction from the outermost portion or boundary of the sidewalk cafe at least twice daily.

#### **§10-1505. Permitting for Sidewalk Cafes Outside the Commercial Core.**

Applications for sidewalk cafes outside the Commercial Core Zoning District shall be submitted to the Codes Enforcement Office in accordance with the regulations contained herein and then forwarded to City Council for approval.

#### **§10-1506. Sidewalk Café Design Standards & Regulations.**

All sidewalk cafes shall comply with the following standards:

- A. A sidewalk cafe shall have a pedestrian walkway with a clear unobstructed width of three feet between the sidewalk cafe and any obstacle (tree, pole, post, sign, planting area, bus shelter, etc.). The pedestrian walkway shall be provided with an unobstructed height of seven feet between the ground plane and an overhead obstacle (tree branch, overhead sign, awning, etc.).
- B. No sidewalk cafe may be permanently located within the sidewalk area by means of raised deck platform, fence, walls or other structures or enclosed by fixed walls,

except that sidewalk cafe boundaries may be delineated by the use of temporary barriers such as balustrades, cordons or railings. Any such temporary barriers must be easily removed and three feet or less in height above the sidewalk. Under no circumstances shall temporary barriers as authorized hereunder be allowed in the identified pedestrian walkway, nor shall a temporary barrier be affixed to the sidewalk or to any permanent structure, except that it may be attached by removable clips or devices approved in advance by the City Engineer.

- C. The City Engineer may approve temporary platforms or similar structures for the sole purpose of leveling sidewalk cafe areas on which sidewalk cafes are located.
- D. No sidewalk cafe shall be situated:
  - (1) Within six feet of any pedestrian crossing as defined in City of Reading Codified Ordinances;
  - (2) Within five feet along the street line of any fire hydrant or other emergency facility;
  - (3) Within five feet of any driveway;
  - (4) Within 10 feet to the rear of any sign marking a designated bus stop;
  - (5) In a manner which restricts sight easements of vehicular traffic; or
  - (6) In a manner which obstructs traffic control devices or traffic signs.
- E. All sidewalk cafes shall be open to the air.
- F. Canopies and awnings may be permitted in accordance with specifications, as delineated by the City Building Code and the City Zoning Code which relate to height, placement, interference with pedestrian passage and traffic sight easements. HARB approval may be required.
- G. Sidewalk cafes shall in no way obstruct the ingress to or the egress from any building or business.
- H. All sidewalk cafes and their attendant facilities or improvements shall comply with clearances required for structures in relation to utility lines as provided in the City Building Code.
- I. No sidewalk cafe shall be located on the sidewalk between the building facade and a bus stop.
- J. No portion of a sidewalk cafe or its facilities, appurtenances, planters, shrubs, tables, chairs or other materials shall be permitted in the pedestrian walkway as defined in this article.
- K. Sidewalk cafes shall provide and maintain adequate lighting in and around the pedestrian walkway so as to allow sidewalk users to observe and avoid obstructions.
- L. Sidewalk cafes shall not obstruct access to hydrants, streetlights, telephones, mailboxes, transit stops or any other public service facility on the sidewalk area or street.
- M. No signs shall be hung or attached to any portion of the sidewalk cafe, except those

signs that are in compliance with provisions of the City Zoning Ordinance.

- N. A sidewalk cafe may be expanded to an abutting property with the written permission of that abutting property owner.
- O. In the event that the proposed sidewalk cafe is not in front of a restaurant or abutting property, the applicant must provide written permission from the owner of the property and reasonable procedures that a sidewalk cafe can be operated in a noncontiguous location.

#### **§10-1507. Sidewalk Cafe Regulations.**

A sidewalk cafe authorized and operated pursuant to this article shall:

- A. Comply with all plans submitted to and approved by the Codes Enforcement Office.
- B. Serve alcoholic beverages only in conformance with Pennsylvania Liquor Control Board requirements.
- C. Operate only during the same hours the kitchen that the kitchen is open for service. All patrons must be vacated from the sidewalk cafe and all utensils, containers or any other serving materials used in the operation of the sidewalk cafe or within the area used by the sidewalk cafe shall be removed from the sidewalk cafe area within one hour after the kitchen closes; provided, however, that any railing, flooring or other support or enclosure used in the assembly, operation or enclosure of the sidewalk cafe may be allowed to remain on the sidewalk area if specifically permitted in the Code Enforcement Office's approval of the sidewalk cafe plans as described under §10-1507 above.
- D. Remove all sidewalk cafe structures by October 30, and not install prior to April 1, in any year for which a license is granted.
  - (1) In the event that favorable weather conditions should prevail, a sidewalk cafe may temporarily reopen on a daily basis during the time period set forth in Subsection D above, with the approval of the Codes Enforcement Office. All tables, chairs and other materials must be removed every day by sundown.
- E. Use no food serving or food service equipment to hold, store, heat, warm, cool, chill or otherwise keep food to be served outside of the sponsoring restaurant for use in or by a sidewalk cafe.
- F. Serve no food or beverages to a patron at a sidewalk cafe unless that patron is seated at a table.
  - (1) If the sidewalk cafe is located adjacent to the sponsoring restaurant, in lieu of Subsection F above, the following is allowed:
    - (a) Self-service by patrons, without table service; or
    - (b) Facilities for standing instead of sitting.
- G. Play no music, from whatever source (acoustical, electric, or other) on the premises outdoors, except in conformance within Chapter 6 Conduct, Noises of the Codified

Ordinances.

- H. Police for trash and debris an area extending 15 feet in each direction from the outermost portion or boundary of the sidewalk cafe at least daily.
- I. Comply with all other provisions of the Codified Ordinances of the City of Reading.

#### **§10-1508. Sidewalk Café Permit Fees.**

- A. The permit fee for a sidewalk cafe shall be \$275 for the calendar year.
- B. The permit fee for a mini-café shall be \$25 for the calendar year.
- C. There shall be no prorating or rebating of permit fees.

#### **§10-1509. Sidewalk Café Application Requirements.**

Each applicant for a license under this article shall submit three copies of his application and plans for the sidewalk cafe to the Codes Enforcement Office, who shall issue a permit upon compliance with the terms and conditions of this article. Application must be made within 14 business days prior to the intended start date. Applications for sidewalk cafe permits shall include the following:

- A. The name and street address of the applicant.
- B. The name and street address of the owner of the sidewalk cafe, of the owner of the underlying freehold and/or abutting property owner if not the same person and:
  - (1) A description of the owner of the abutting property, if other than a natural person, including the legal status (corporation, partnership, etc.) and a general description of the type(s) of business operated on the abutting property.
  - (2) Letter from the abutting property showing their support for the operation of a sidewalk café.
  - (3) Written authority in the form of a power of attorney from the owner to submit the application if the applicant is not the owner of the abutting property.
- C. The name and street address of the registered agent for the service of process, if the applicant represents a corporation; or the names and street addresses of the officers or partners, if the applicant represents an association, partnership or other entity.
- D. The name and street address of the operator, manager or other person responsible for the operation of the sidewalk cafe.
- E. The name under which the sidewalk cafe will be operated.
- F. The street address and the City food establishment license number of the restaurant operating and servicing the sidewalk cafe.
- G. A copy of the current City Business License.

- G. A site plan drawn to a scale of 1/2 inch equals one foot, showing:
- (1) The entirety of the sidewalk abutting the property of the owner;
  - (2) The frontage of the property proposed for the sidewalk cafe;
  - (3) All abutting properties;
  - (4) All existing sidewalk features, including but not limited to trees, utility poles, sign poles, fire hydrants, permanent litter receptacles, telephone booths, news vending racks and mailboxes;
  - (5) Any bus stops within 25 feet on either side of the proposed sidewalk cafe area; and
  - (6) Detailed drawings of legible proportions showing the limits of the proposed sidewalk cafe site, the design dimension and proposed location of all proposed temporary structures (i.e., canopies, umbrellas, planters, landscaping, tables, chairs, all exterior lighting, electrical outlets, etc.), the proposed pedestrian walkway and the side and front elevations of the proposed sidewalk cafe.
- H. The seating capacity of the proposed sidewalk cafe.
- I. A copy or copies of the certificate or certificates of insurance required to be provided.
- J. If the serving of alcoholic beverages is proposed, a copy of the current state liquor license that will allow or can be amended to allow applicant to serve alcoholic beverages in the sidewalk cafe.

#### **§10-1510. Sidewalk Café - Review of Application.**

- A. Before any permit is issued pursuant to this article, the plans submitted to the Codes Enforcement Office pursuant to this article shall be referred to and approved by the Public Works Director, Reading Police Department and Department of Fire and Rescue Services.
- B. The Codes Enforcement Office shall determine if the applicant has:
- (1) Obtained the approval of the Public Works Director and Building Official for any railing, flooring or other support or enclosure used in the assembly, operation or enclosure of the sidewalk cafe. No such railing, flooring or other support or enclosure shall be considered an erection of, addition to or a structural alteration of a building or structure under applicable City Building Code unless such railing, flooring or other support or enclosure is permanently attached to such building or structure.
  - (2) Obtained the approval of the Historical Architectural Review Board (HARB) if the sidewalk café is located within any area designated as part of an historic district and if the applicant proposes any facilities which are under the jurisdiction of the HARB. The HARB shall use the review criteria for such plans relating to a sidewalk cafe's specific location, size and structure, for its

compatibility of scale, design and alteration in the plans for a sidewalk cafe approved by the HARB requires reapproval from the HARB. Once approval is granted by the HARB, the approved plans are valid and do not require annual reapproval. The HARB shall only review applications which have the written approval from the Public Works Director as specified herein.

- (3) Complied with all rules, regulations and specifications of this article.
- C. The Codes Enforcement Office may impose any other restriction on the location, size or design of the sidewalk café that, in his sole judgment, protects the health, safety and welfare of the public.

#### **§10-1511. Conditions for Issuance of Permit.**

- A. Upon approval by the Codes Enforcement Office of the plans submitted by the applicant and upon the applicant furnishing to the City of Reading the following, the Codes Enforcement Office shall issue a permit, valid through the end of the calendar year:
  - (1) A hold-harmless agreement executed by the applicant and indemnifying the City against loss, including costs and expenses, resulting from injury to person or property as a direct or indirect result of the operation of the sidewalk cafe. Said hold-harmless agreement shall be subject to the approval of the City Solicitor.
  - (2) Proof of liability insurance in the amount of \$100,000 per individual and \$300,000 per occurrence.
  - (3) If applicable, proof that the applicant has a state liquor license authorizing him to serve alcoholic beverages in his/her sidewalk cafe.
- B. Sidewalk cafe Permits are not transferable. Changes in ownership/operation require reapplication for a permit.

#### **§10-1512. Removal of Improvements.**

- A. If the City incurs any costs in removing any equipment or improvements from a sidewalk cafe for the following reasons: the establishment failed to remove equipment at the close of the business day, the establishment went out of business or the establishment failed to renew its license, within 30 days of the close of the outdoor season, the City shall remove and store all equipment and bill the property owner for the actual costs of labor, materials, equipment or any other item, service, including storage costs, or expense incurred by the City to correct such violation, plus any additional administrative fees. The equipment removed shall remain in the City's possession until the bill for removal and any fines or fees are paid in full.
- B. Any bill for such removal of equipment undertaken pursuant to this chapter shall be

billed to and paid by the property owner within 60 days. Upon failure of the property owner to pay the amounts due within 60 days, the City shall assess this uncollected debt on the property taxes of this building.

**§10-1513. Permit Renewal.**

A sidewalk cafe permit may be renewed annually, upon review of the renewal application and complaint history, if any, which shall be provided by the Codes Enforcement Office, Reading Police Department, Department of Public Works, and Department of Fire and Rescue Services Bureau of Police. Each agency shall provide to the Codes Enforcement Office copies of any inspection results, complaints filed and citations issued concerning the sidewalk cafe under consideration. The renewal fee for the renewed permit shall be as stipulated in §10-1508 above.

**§10.1514. Written Notice of Violations; Suspension of Permit.**

Upon finding by either the Codes Enforcement Office or Reading Police Department that an applicant has violated any provisions of this article, the Codes Enforcement Office shall give written notice to the applicant to correct said operational violation. Upon failure to correct said operational violation within the time frame specified, the Codes Enforcement Office may take appropriate action, as necessary, to maintain the Pedestrian Walkway. The Codes Enforcement Office may suspend the applicant's permit issued pursuant to this article, as well as pursue prosecution in accordance with the requirements herein. The Codes Enforcement Office shall, in his/her sole judgment, give a violator reasonable time to repair any structural damage or physical violation of any provision of this article. An appeal before City Council shall be accorded if requested.

**§10-1515. Violations and penalties; effect on eligibility for permit.**

- A. Whoever violates any provisions of this article shall, upon conviction thereof in a summary proceeding, be fined not less than \$200 and not more than \$1,000 for each offense, to be collected as other fines and costs are by law collectible, or imprisoned for not more than 90 days, or both. Each day during which a violation occurs shall constitute a separate offense.
- B. Any person who is convicted of a violation of any of the provisions of this article shall have his permit suspended for one full year and shall not be eligible for another license until the expiration of one full year.
- C. Any person who fails to remove a sidewalk structure by October 30, as provided for in §10-1507, shall not be eligible for a permit in any following year.
- D. Failure to observe any of the conditions set out herein is grounds for revocation of a



license. Prior to such revocation, the Codes Enforcement Office shall give 10 days' written notice to the permit of his violation of or his failure to observe a general condition as set out above. If the permittee requests a hearing prior to the expiration of that ten-day notice period, the Codes Enforcement Office shall hold a hearing to determine if the permit should be revoked. The permittee may present evidence in his own behalf if he so desires. The decision in regard to revocation may be appealed to City Council. If the permittee fails to request such a hearing, the revocation shall become effective upon the expiration of the ten-day notice period. If a permit granted under this section is revoked, all tables, chairs and other appurtenances used as a part of the sidewalk cafe shall be immediately removed from the sidewalk.

- E. This article and the foregoing penalties shall not be construed to limit or deny the right of the City or any person to such equitable or other remedies as may otherwise be available with or without process of law.

**§10-1516. Determination on Application.**

The Codes Enforcement Office shall grant or deny an application for a permit pursuant to this article within ten business days of its complete submission.

**§10-1517. Reservation of Rights.**

Neither the adoption of this article nor the granting of any permit pursuant hereto shall be construed as a waiver of any right, privilege or immunity of the City of Reading with respect to streets and sidewalks, whether express or implied.

**§10-1518. Penalties for Offenses**

Any person who shall violate any of the provisions of this article shall be liable to prosecution and shall, upon conviction thereof, be liable to a fine that shall not be less than \$300 or exceed \$1000, imprisonment for not more than 15 days, or both such fine and imprisonment.



## City of Reading City Council

### Staff Report

**Agenda Item:** Bottle Club Ordinance                      **From:** Linda A. Kelleher, City Clerk  
**Briefing No.:** 2-2007                                              **Date:** April 17, 2007

**SUBJECT:** Amendment to Bottle Club Ordinance

**SUMMARY:** The amendment to the City's Bottle Club Ordinance was initiated and researched by Chief of Police William Heim. This final draft was modeled after the ordinance currently used in Bethlehem, PA. This ordinance improves and expands on Reading's current Bottle Club Ordinance by:

- Require a permit (revocable) and annual administrative fee of \$250
- Add requirements for general liability insurance
- Require copies of valid local and state licenses and permits
- Obtain a Zoning Permit
- Restrict the hours of operation and place restrictions on the rental of the facility
- Prohibit the location of Bottle Clubs in neighborhoods where schools, churches, residential districts, etc.
- Prohibit the storage of alcohol on the premises during times when the club is not open
- Allows for the revocation of the Bottle Club permit
- Sets a minimum fine of \$300 and a maximum fine of \$1,000.

This ordinance was drafted by the Chief of Police and City Clerk. The draft was reviewed by the Council Public Safety Committee in February and forwarded to the Legislative Aide Committee for review and edit. The Legislative Aide Committee worked with Captain Robert Shafer to refine the ordinance. After the final draft was completed, the ordinance was reviewed at the April 16<sup>th</sup> Public Safety Committee. The attached ordinance reflects some minor change recommended by the Committee.

**RECOMMENDATIONS:** The Council Public Safety Committee recommends the enactment of the Amendment to the Bottle Club Ordinance.

**ATTACHMENTS:** Bottle Club Ordinance

BILL NO. \_\_\_\_\_ 2007  
AN ORDINANCE

**AN ORDINANCE AMENDING THE CITY OF READING CODIFIED ORDINANCES BY AMENDING CHAPTER 6 CONDUCT, PART 1 ALCOHOLIC BEVERAGES BY ESTABLISHING RULES AND REGULATIONS FOR BOTTLE CLUBS AND ADDING THE PERMIT FEE AND FINE TO THE CITY OF READING FEE SCHEDULE.**

**THE COUNCIL OF THE CITY OF READING HEREBY ORDAINS AS FOLLOWS:**

**SECTION 1.** Amending the City of Reading Codified Ordinances amending Chapter 6 Conduct, Part 1 Alcoholic Beverages by establishing rules and regulations for Bottle Clubs as follows:

**§ 6-101.** This part shall apply to Bottle Clubs within the City of Reading that are not licensed by the Pennsylvania Liquor Control Board.

**§ 6-102. Purpose**

The Council of the City of Reading hereby declares that the purpose of the within Rules and Regulations is to regulate Bottle Clubs to preserve the health, safety and character of neighborhoods and to protect the rights of its citizens to the quiet enjoyment of the same.

**§ 6-103 Definitions**

**Bottle Club** - a place of assembly or any other use defined in this Ordinance, other than a dwelling unit, including but not limited to, taverns, clubs, and social buildings, that is not licensed by the Pennsylvania Liquor Control Board, in which no alcoholic beverages are sold, but which permits the consumption of such beverages by patrons or guests when such beverages are either provided by the operator or agents or employees of the operator for consumption on the premises or are brought into or kept at the establishment by the patrons or guests assembling there. This term includes but is not limited to those organizations commonly known as “ social clubs.”

**Alcoholic beverages** - any and all beverages, including malt beverages, which contain alcohol, liquor or such other intoxicating substances as are further defined in the Pennsylvania Liquor Code, 47 P.S. Section 1-101 et seq.

**Operate** - any person, entity or establishment that:

- A. Controls or causes to be controlled through agents or employees any bottle club.
- B. Conducts or manages a bottle club.
- C. Owns, leases or subleases any area used as a bottle club. (Ord. 11-1998, 4/27/1998, §1)

**Residence** - a building or structure wholly or partially used for living, sleeping, eating, cooking and sanitation by human occupants.

**Residential District** - those classes of residential districts as specified in the City of Reading Zoning Ordinance.

### **§ 6-104 Unlawful Activities**

In any district in which Bottle Clubs are otherwise permitted, it shall be unlawful for any person or persons who own, operate, lease, manage or control a Bottle Club to:

- (a) Remain open and/or to transact business between the hours of 12:00 a.m. midnight and 11:00 a.m., prevailing time. In all cases, the premises must be vacated within fifteen (15) minutes after the required closing time.
- (b) Allow members to rent or occupy the club unrestricted. Bottle and social clubs will adhere to the following restrictions when allowing members to hold functions in the club. No event shall exceed six (6) hours in length, nor to exceed one (1) rental in a twenty-four (24) hour period, nor to occur between the hours of 12:00

a.m. midnight and 11:00 a.m. by individuals or an organization for the purpose of a private party in which alcoholic beverages are carried onto the premises.

(c) Conduct activities to which this Ordinance applies without possessing a valid Club permit as specified herein.

(d) Any structure of a Bottle Club shall not be located within three hundred (300') feet from the nearest property line of any residential district, church, school, other institution of learning or education, hospital, library, park, and /or playground. Bottle Clubs operating under the City' s existing laws will be exempted from Section 6-105.d until the property or Club is sold or transferred to another party or legal entity.

#### **§ 6-105 Club Requirements**

Any and all Bottle Clubs, as that term is defined, shall comply with the following requirements:

(a) Obtain and carry general liability coverage in the minimum amount of, \$1,000,000 per occurrence, proof of which shall be filed with the Codes Enforcement Office of the City of Reading, proof of which shall be filed annually when the permit is renewed with the Codes Enforcement Office; and.

(b) Possess a valid certificate of occupancy issued by the Pennsylvania Department of Labor and Industry and the City of Reading and prominently display said certificate as required, proof of which shall be filed annually when the permit is renewed with the Codes Enforcement Office; and

(c) Obtain a valid business privilege and mercantile tax license from the City of Reading and prominently display said license as required, proof of which shall be filed annually when the permit is renewed with the Codes Enforcement Office; and

(d) Obtain a City of Reading Zoning Permit and all other valid City of Reading

permits and prominently display said permit as required, proof of which shall be filed annually when the permit is renewed with the Codes Enforcement Office; and

(e) Obtain a valid Bottle Club permit pursuant to this Article and prominently display said permit as required; and

(f) Conspicuously post the hours of operation at the business premises such that patrons are sufficiently apprised of same; and

(g) Clubs may not store any alcohol of any type on their premises between the hours of 12:00 a.m. and 11:00 a.m.; and

(h) The owner and or operator of the Bottle Club must provide proof that they are a resident of Berks County. If the owner and or operator is not a Berks County resident they must designate the name, mailing address and telephone number of a responsible agent who has a primary residence in Berks County and who has the oversight of the buildings operations and is authorized to accept service on behalf of said property owner; and

(i) The owner and or operator of the Bottle Club may not have been convicted of a crime classified as a felony offense under the laws of the Commonwealth of Pennsylvania or the United States, or be convicted of any comparable crime under the laws of any other state in the United States; and

(j) Have a valid and current trash collection contract with a licensed hauler, proof of which shall be filed annually when the permit is renewed with the Codes Enforcement Office.

#### **§ 6-106 Club Permit**

(a) Any person or persons desiring to operate or continue to operate a Bottle Club shall file with the Codes Enforcement Office of the City of Reading an application for a Bottle Club permit, which application shall include the following information: the name and address of the Bottle Club, a statement whether the

business premises is leased or owned by the Bottle Club, the name and address of the lessor of the business premises, if applicable, the nature of the ownership of the Bottle Club, i.e. corporation, partnership, joint venture, association, the names and addresses of the officers and/or financial interest in the Bottle Club. Also supply the name, addresses and phone number of any and all managers and club officer who will be responsible for the operation of the club during any time that it is open or at special events and rentals. Failure to keep the city informed of current information will be cause to revoke the permit.

(b) The Codes Enforcement Office shall determine whether the Bottle Club fully and completely complies with the provisions and requirements of this Ordinance within twenty (20) days following the date on which application is received. If the Codes Enforcement Office determines that the applicant fully and completely complies with the provisions hereof, the office shall issue a Bottle Club permit; if the Codes Enforcement Office determines that the applicant does not fully and completely comply with the provisions hereof, the office shall deny the issuance of a Bottle Club permit and shall furnish written evidence of the same to the applicant together with the reason(s) for denial.

(c) The Club shall pay an administrative fee of two hundred and fifty dollars (\$250.00) for a Bottle Club permit and two hundred and fifty dollars (\$250.00) for each renewal thereof on a yearly basis. Said Bottle Club permit shall be effective for a period of one year following the date of issuance; provided, in the event the Bottle Club fails to fully and completely comply with the provisions hereof or is convicted of any unlawful activities during the term of the Bottle Club permit so issued, the City of Reading shall have the authority to revoke the Bottle Club permit due to Bottle Club's lack of compliance.

**§6-107. Authority of Police Officer.**

Any police officer is authorized to arrest with or without warrant, any person or persons violating any provision of this Part. (Ord. 11-1998, 4/27/1998, §1)

**§ 6-108 Penalty**



(a) Any person, persons, or entity violating the provisions of this Ordinance shall, upon conviction thereof, be subject to a fine of Three Hundred Dollars (\$300.00) to One Thousand Dollars (\$1,000.00) plus costs for each day of such violation and, in default of payment of said fine and costs, to a term of imprisonment not to exceed 30 days, and any and all other remedies available in accordance with the Codified Ordinances of the City of Reading and the laws of the Commonwealth of Pennsylvania.

(b) The unlawful activities specified herein shall constitute separate and distinct offenses for each and every day in which said activities are conducted.

(c) In addition to any monetary penalties involved, the City of Reading shall revoke the Club Permit required upon conviction of any unlawful activities and any building, occupancy, zoning or other similar permits previously issued by the City for the premises on which such Bottle Club has been operated.

(d) In the event of any of the unlawful activities specified herein are conducted by or in the name of a corporation, partnership, joint venture, trust, firm or association, in addition to entity liability, the officers, agents or principals of said corporation, partnership, joint venture, trust, firm or association shall be deemed in violation, as well as the person or persons engaged in the unlawful activity.

**SECTION 2.** This ordinance shall be effective ten (10) days after its adoption and approval by the Mayor, or repassage by City Council over the Mayor' s veto, in accordance with Section 219 of the City of Reading Home Rule Charter, or as set forth in Section 221 of the City of Reading Home Rule Charter.

Enacted by Council\_\_\_\_\_, 2007

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President of Council

BILL NO. \_\_\_\_\_-2007

**A N O R D I N A N C E**

**AUTHORIZING THE MAYOR TO EXECUTE A DEED FROM THE CITY OF READING TO OUR CITY-READING, INC. THEREBY CONVEYING PREMISES SITUATE AT 328 MULBERRY STREET, READING, BERKS COUNTY, PENNSYLVANIA.**

**WHEREAS**, the City of Reading is the legal owner of property situate at 328 Mulberry Street, Reading, Berks County, Pennsylvania; and

**WHEREAS**, Our City-Reading, Inc., requests that said 328 Mulberry Street premises be conveyed to it; and

**WHEREAS**, the City of Reading intends to convey said premises to said entity.

**NOW, THEREFORE THE COUNCIL OF THE CITY OF READING HEREBY ORDAINS AS FOLLOWS:**

1. **SECTION 1.** The Mayor is authorized to execute a deed, and any other required documents, to convey the premises situate at 328 Mulberry Street, Reading, Berks County, Pennsylvania, from the City of Reading to Our City-Reading, Inc.

**SECTION 2.** This Ordinance shall be effective ten (10) days after passage.

Enacted \_\_\_\_\_, 2007

\_\_\_\_\_  
President of Council

Attest:

\_\_\_\_\_  
City Clerk

(LAW DEPT.)

BILL NO. \_\_\_\_\_-2007

**A N O R D I N A N C E**

**AUTHORIZING THE MAYOR TO EXECUTE THE LEASE BETWEEN THE CITY OF READING AND THE BERKS COUNTY CHAPTER OF THE IZAAK WALTON LEAGUE OF AMERICA FOR PREMISES SITUATE IN THE VICINITY OF EGELMAN'S DAM.**

**WHEREAS**, the City of Reading is the legal owner of certain property in the area known as "Egelman's Dam" as set forth in the attachment; and

**WHEREAS**, the City of Reading has previously leased the property to the Berks County Chapter of the Izaak Walton League of American and intends to renew the lease pursuant to the terms set forth in attachment; and

**NOW, THEREFORE THE COUNCIL OF THE CITY OF READING HEREBY ORDAINS AS FOLLOWS:**

**SECTION 1.** The Mayor is authorized to execute any and all documents to facilitate and effectuate the renewal of the lease between the City of Reading the Berks County Chapter of the Izaak Walton League of America for property located around "Egelman's Dam" as described in the attachment.

**SECTION 2.** This Ordinance shall be effective ten (10) days after passage.

Enacted \_\_\_\_\_, 2007

\_\_\_\_\_  
President of Council

Attest:

\_\_\_\_\_  
City Clerk  
(Council Staff)

**(APPROVED BY THE PUBLIC WORKS COMMITTEE)**

## **AGREEMENT**

THIS AGREEMENT made this \_\_\_\_\_ day of \_\_\_\_\_, 2007, by and between the CITY OF READING, a municipal corporation situate in the County of Berks and Commonwealth of Pennsylvania, hereinafter called "LESSOR",

AND

THE BERKS COUNTY CHAPTER OF THE IZAAK WALTON LEAGUE OF AMERICA, INC., a non-profit corporation situate in the County of Berks and Commonwealth of Pennsylvania, hereinafter "LESSEE",

WHEREAS, one of the purposes of the IZAAK WALTON LEAGUE is to promote and foster the protection, restoration and conservation of our natural resources so that they may be reserved and enjoyed by all who wish to enjoy them, now and in the future; and

WHEREAS, to further this purpose the Berks County Chapter of the IZAAK WALTON LEAGUE has improved, protected and stocked with fish the various public waters in and around the City of Reading and the County of Berks, including Egelman's Dam; and

WHEREAS, the League previously entered into a Lease Agreement with the City of Reading on August 6, 1980 (for a term of September 1, 1981 to August 31, 2006) for Egelman's Dam, the mud catcher, the two (2) filter beds, the shed and garage appurtenant and the first one hundred (100) yards of the stream immediately below the dam, subject however to the right of the public generally to use the park's facilities. The previous Lease expired August 31, 2006; and

WHEREAS, the League was/is responsible for improvements to the leased premises (described above, including but not limited to the pump house, the garage and the grounds abutting the dam). The League desires to continue making improvements with respect to the leased property.

NOW THEREFORE, in consideration of the above promises and the mutual covenants herein contained, it is hereby agreed as follows:

1. The Lessor does hereby demise and lease unto the Lessee the following premises situate in the City of Reading, County of Berks and Commonwealth of Pennsylvania, namely: Egelman's Dam, the mud catcher, the two (2) filter beds, the shed and garage appurtenant and the first one hundred (100) yards of the stream immediately below the Dam. The public will continue to enjoy access to and use of the facilities. The term of this new agreement shall commence upon execution of the agreement by the Mayor of the City of Reading and shall terminate on August 21, 2032.
2. Said premises are to be used by the Lessee for the sole purpose of preserving and protecting said area and for the propagation of game fish therein, and in furtherance thereof, the Lessee shall have the right during the term of this Lease to take any and all steps and to make such improvements to the leased premises as will best advance the purposes as herein set forth. Prior written approval of the Lessor shall not be required unless such improvements involve substantial capital expenditure and/ or a substantial change in the presently existing condition of the leased premises.

3. It is further agreed that the Lessee shall have the option to renew this lease for an additional twenty-five year period provided written notice of said intention is directed to the Lessor at least thirty (30) days before the date of termination set within the Lease.
4. In consideration of the Lease of said premises and the obligations of the Lessee to preserve and protect the same, the Lessor hereby agrees to periodically check and maintain the valves in said filter beds, to properly seal of fence them off to prevent injury to others, to mow the grass and generally to maintain the area so as to keep it attractive and to permit convenient access thereto by the Lessee.
5. It is agreed and understood between the parties to this Agreement/Lease that the Lessor shall not be liable for and the Lessee hereby agrees to indemnify and save harmless the Lessor of and from any and all claims or demands of any character from any person or persons whatsoever for losses, injuries or damages, including attorney's fees, suffered by reason of, or in connection with the occupancy and use of the demised premises by the Lessee, its agents, employees or business invitees, and/or general public guests; and the Lessee agrees to take out and maintain Public Liability insurance covering the demised premises in the sum of \$100,000.00 for injuries and/or wrongful death to any one person and subject to the same limit for each person and in the amount not less than \$500,000 on account of one accident, in Lessee's name and in the name of the Lessor, in a company approved by the Lessor; and Lessee agrees to maintain such insurance continuously throughout the term of this Lease and to furnish Lessor

from time to time with a certificate of insurance evidencing such insurance coverage.

6. Lessor reserves the right, in the event that it is determined by proper legislative action of City Council, to sell the herein demised premises, to terminate this Lease within said term upon the giving of not less than sixty (60) days notice in writing to Lessee and, upon the giving of such sixty (60) day notice in writing, this Lease shall terminate and end at the expiration and end of the sixtieth day.
7. Any and all notices shall be mailed and/or delivered to the following addresses:  
Lessor – City of Reading, Law Department, City Hall, Rm. 2-54, Reading, PA 19601; Lessee – Richard L. Heckman, 114 Shuler Rd., Fleetwood, PA 19522.  
Any changes to said addresses (or entities) shall be immediately provided in writing

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed the day and year above written.

WITNESS:

CITY OF READING:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

“LESSOR”

WITNESS:

BERKS COUNTY CHAPTER OF THE  
IZAAK WALTON LEAGUE OF  
AMERICA, INC.

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
President

“LESSEE”

BILL NO. \_\_\_\_\_  
AN ORDINANCE

AMENDING CODIFIED ORDINANCES OF THE CITY OF READING, CHAPTER 6,  
SECTION 6-122 - BY BRINGING IT INTO COMPLAINE WITH THE BOTTLE CLUB  
ORDINANCE.

THE COUNCIL OF THE CITY OF READING HEREBY ORDAINS AS FOLLOWS:

SECTION 1. Amending Section 6-122 of the Codified Ordinances of the City of Reading  
as follows:

**§6-122. Prohibiting Consumption of Alcoholic Beverages  
without the Consent of the Owner.**

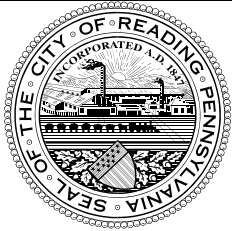
No person within the City shall consume alcoholic beverages on public places *unless permitted by law* or on private property without the consent of the owner. With respect to governmentally-owned property, the consent of duly authorized representatives of the governmental entity shall be required.  
(Ord. 89-1989, 8/30/1989, §2)

SECTION 2. All Ordinances or parts thereof conflicting with the provisions of this Ordinance are hereby repealed, insofar as they are inconsistent with this Ordinance.

SECTION 3. Any court determination that a portion of an amended section is unconstitutional or invalid shall not affect the remaining portion of said section or other Ordinance sections.

SECTION 4. This Ordinance shall become effective within ten (10) days of the date of passage and approval by the Mayor or override of the Mayor's veto.





## **AGENDA MEMO**

### **MANAGING DIRECTOR**

**TO:** President Spencer and City Council

**FROM:** Leon Churchill, Managing Director

**MEETING DATE:** May 14, 2007

**AGENDA MEMO DATE:** May 3, 2007

**RECOMMENDED ACTION:**

To approve an Ordinance presented by the Administration relating to the annual salary for Charles D. Younger, City Solicitor, for the City of Reading.

**RECOMMENDATION:**

It is the recommendation of this Administration to increase the salary for the City Solicitor to \$66,150, a five (5%) percent increase, effective January 10, 2007. The performance evaluation supporting this recommended action was conducted as per our City Ordinance No. 22-2002, which provides for a performance review of department heads to be completed by the Managing Director.

**BACKGROUND:**

It is this Administration's position to make the salary level for all department directors as equitable and fair as possible. Mr. Younger has been instrumental in the Antietam Lake litigation support, the Market House acquisition, the Elks Club and the Neversink Mountain proposal.

**BUDGETARY IMPACT:**

The 5% increase amounts to \$3,150. Funds are available in the City's General Fund in the City Solicitor's budget. This increase accounts for two evaluation periods.

**PREVIOUS ACTION:**

Not applicable.

**SUBSEQUENT ACTION:**

Not applicable.

**RECOMMENDED BY:**

The Mayor and Managing Director

**RECOMMENDED MOTION:**

To increase the present salary of the City Solicitor to \$66,150.

BILL NO. \_\_\_\_\_-2007

**AN ORDINANCE**

**AN ORDINANCE INCREASING THE SALARY OF THE CITY SOLICITOR, CHARLES D. YOUNGER, IN ACCORDANCE WITH SECTION 706. OF THE CITY OF READING HOME RULE CHARTER AND BILL NO. 22-2002 WHICH ESTABLISHED A PROCEDURE FOR CITY COUNCIL TO PROVIDE ANNUAL INCREASES TO THE CITY'S DEPARTMENT DIRECTORS.**

**WHEREAS**, Charles D. Younger, was confirmed, by City Council, as the City's Solicitor on January 10, 2005; and

**WHEREAS**, City Council passed Bill No. 22-2002, on June 24, 2002, which states that a Department Director shall receive an annual salary adjustment based upon a performance evaluation; and

**WHEREAS**, Charles D. Younger, was evaluated by both City Council and the Administration and has received a performance evaluation which is satisfactory, he is entitled to a salary increase to \$66,150.00 (5% merit) effective retroactively to January 10, 2007.

**SECTION 1. COMPENSATION.** The salary of the City Solicitor, Charles D. Younger, shall be SIXTY-SIX THOUSAND ONE HUNDRED FIFTY DOLLARS (\$66,150.00) per annum, payable in equal bi-monthly installments.

**SECTION 2. REPEALER.** All ordinances or parts of ordinances which are inconsistent herewith are hereby repealed.

**SECTION 3. EFFECTIVE DATE.** This ordinance shall become effective 10 days after its adoption in accordance with Section 221 of the City of Reading Home Rule Charter.

Passed Council \_\_\_\_\_, 2007

\_\_\_\_\_  
President of Council

Attest:

\_\_\_\_\_  
City Clerk

**BILL NO. \_\_\_\_\_**

**AN ORDINANCE**

**AN ORDINANCE AMENDING THE CODIFIED ORDINANCES CHAPTER 11, PART 1 §11-102. PERMIT REQUIRED; APPLICATION; FEES; EXEMPTIONS BY CHANGING THE MAILING DATE, SUBMITTAL DATE AND EFFECTIVE DATE OF THE RENTAL OCCUPANCY PERMIT APPLICATIONS FOR THE 2007 CALENDAR YEAR AND EXTENDING THE EFFECTIVE DATE OF THE 2006 RENTAL OCCUPANCY PERMITS THROUGH AUGUST 31, 2007.**

**THE CITY OF READING HEREBY ORDAINS AS FOLLOWS:**

**SECTION 1.** Amending the Codified Ordinances Chapter 11, Part 1 §11-102. Permit Required; Application; Fees; Exemptions by changing the Mailing Date, Submittal Date and Effective Date of the Rental Occupancy Permit Applications for the 2007 calendar year, thereby extending the effective date of the 2006 Rental Occupancy permits through August 31, 2007 as set forth hereafter.

**SECTION 2.** Chapter 11, Part 1 §11-102. Permit Required; Application; Fees; Exemptions, paragraph G requires the application package to be sent to all permit holders by April 30<sup>th</sup> of the calendar year. Due to another pending amendment of this ordinance, this date is hereby amended and will be changed to June 30 for the 2007 calendar year only.

**SECTION 3.** Chapter 11, Part 1 §11-102. Permit Required; Application; Fees; Exemptions, paragraph H requires the renewal applications to be submitted to the City between May 1 and June 30 of the calendar year. Due to another pending amendment of this ordinance, these dates are hereby amended and will be changed to July 1 and August 31 of the 2007 calendar year only.

**SECTION 4.** Chapter 11, Part 1 §11-102. Permit Required; Application; Fees; Exemptions, paragraph F requires that the effective date of the permits shall be July 1 of the calendar year. Due to another pending amendment to this ordinance, the effective date for the 2007 calendar year only is hereby amended and will be changed and/or extended to September 1, 2007.

**SECTION 5.** These modified dates shall not relieve anyone from the other requirements of Chapter 11. The fees applied in Chapter 11 shall not be prorated or

adjusted and all other Chapter 11 requirements and penalties as stated and set forth prior to this ordinance shall likewise be applied, remain in force, and are hereby ratified.

.  
**SECTION 6.** This ordinance shall be effective ten (10) days after its adoption and approval by the Mayor, or repassage by City Council over the Mayor's veto, in accordance with Section 219 of the City of Reading Home Rule Charter, or as set forth in Section 221 of the City of Reading Home Rule Charter.

Enacted \_\_\_\_\_, 2007

\_\_\_\_\_  
President of Council

Attest:

\_\_\_\_\_  
City Clerk

**(Councilwoman Goodman-Hinnershitz)**

Submitted to Mayor: \_\_\_\_\_

Date: \_\_\_\_\_

Received by the Mayor's Office: \_\_\_\_\_

Date: \_\_\_\_\_

Approved by Mayor: \_\_\_\_\_

Date: \_\_\_\_\_

Vetoed by Mayor: \_\_\_\_\_

Date: \_\_\_\_\_

BILL NO. \_\_\_\_\_-2007  
AN ORDINANCE

**AUTHORIZING THE SALE OF THE FOLLOWING PROPERTY: STREET  
READING, BERKS COUNTY, PENNSYLVANIA.**

**SECTION 1.** The City of Reading is the titled owner of lots 22 and 23, in block 27 of a plan known as Glenside the premises adjoins 1129 Chester Street, Reading, Berks County, Pennsylvania; and

**SECTION 2.** The City of Reading hereby offers said premises to Mr. John Weidner at the agreed upon price of \$1,000.00; and

**SECTION 3.** The City of Reading now waives any and all requirements as might be set forth in the Administrative Code, and

**SECTION 4.** City Council thereby directs the Administration to take the necessary steps to effectuate the conveyance of the property, with all possible speed, to Mr. John Weidner

**SECTION 5.** This Ordinance shall become effective 10 days after its adoption in accordance with Section 221 of the City of Reading Home Rule Charter.

Enacted \_\_\_\_\_, 2007

\_\_\_\_\_  
President of Council

Attest:

\_\_\_\_\_  
City Clerk

Submitted to Mayor: \_\_\_\_\_

Date:

*Received by Mayor's Office:* \_\_\_\_\_

Date:

Approved by Mayor: \_\_\_\_\_

Date:

Vetoed by Mayor: \_\_\_\_\_  
Date:

### **AGREEMENT**

THIS AGREEMENT made this \_\_\_\_\_ day of \_\_\_\_\_, 2007, by and between the CITY OF READING, a municipal corporation situate in the County of Berks and Commonwealth of Pennsylvania, hereinafter "SELLER"

AND

MR. JOHN WEIDNER., a private citizen, residing at 1129 Chester Street in the City of Reading in the County of Berks and Commonwealth of Pennsylvania, hereinafter "PURCHASER",

WHEREAS, the Purchaser acquired 1129 Chester Street in 1973; and

WHEREAS, in 1978 the Purchaser approached the Seller regarding the irregular parcel adjoining 1128 Chester Street, hereinafter "PARCEL". The Parcel is defined as: lots 22 and 23 in Block 27 of a plan known as "Glenside" identified in Planning Book Volume 2, page 47, situate in the 19<sup>th</sup> Ward of City of Reading, County of Berks; and

WHEREAS, in 2005 the Seller sold properties through a competitive, open and fair auction, the Purchaser attempted to acquire the Parcel at auction; and

WHEREAS, the Purchaser was unsuccessful and the Seller remained titled owner of the Parcel; and

WHEREAS, upon conclusion of the auction the Purchaser restated a previous offer to acquire the property at a purchase price of \$1,000.00; and

WHEREAS, the Purchaser has maintained the Parcel for over thirty (30) years, originally clearing the Parcel of weeds and debris, the efforts of the purchaser has spared the Seller maintenance costs for the corresponding period; and

WHEREAS, the Purchaser desires to continue maintaining and improving the Parcel.

NOW THEREFORE, in consideration of the above promises and the mutual covenants herein contained, it is hereby agreed as follows:

8. The Seller does hereby demise and convey unto the Purchaser the following premises situate in the City of Reading, County of Berks and Commonwealth of Pennsylvania, namely: lots 22 and 23 in Block 27 of a plan known as "Glenside" identified in Planning Book Volume 2, page 47, situate in the 19<sup>th</sup> Ward of City of Reading. The terms of this agreement shall commence upon execution of the agreement by the Mayor of the City of Reading and the Purchaser.
9. The Parcel is to be used by the Purchaser for the sole purpose of preserving and maintaining said area as an extension to and match of the property situate at 1129 Chester Street.
10. The Purchaser agrees to pay to the Seller \$1,000.00 upon commencement of the terms of the agreement.
11. It is further agreed that the Purchaser shall assume responsibility for all legal fees and other such costs as might be associated with the conveyance of the Parcel.
12. It is agreed and understood between the parties to this Agreement that the Seller shall not be liable for and the Purchaser hereby agrees to indemnify and save



harmless the Seller of and from any and all claims or demands of any character from any person or persons whatsoever for losses, injuries or damages, including attorney's fees, suffered by reason of, or in connection with the occupancy and use of the demised premises by the Purchaser, its agents, employees or business invitees, and/or general public guests; and the Purchaser agrees to take out and maintain the appropriate insurance covering the demised premises.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed the day and year above written.

WITNESS:

CITY OF READING:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

"SELLER"

Mr. John Weidner

\_\_\_\_\_  
Resident

"PURCHASER"

BILL NO. \_\_\_\_\_-2007

**A N O R D I N A N C E**

**AUTHORIZING THE MAYOR TO EXECUTE A CERTAIN “LAND-OWNER-GRANTEE AGREEMENT” BETWEEN THE CITY OF READING AND THE RIVERPLACE DEVELOPMENT CORPORATION AND/OR COMMON-WEALTH OF PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION TO ESTABLISH SOLAR-POWERED LIGHTING ALONG THE SCHUYLKILL RIVER AND WYOMISSING CREEK TRAILS.**

**WHEREAS**, there exists a certain Pennsylvania Department of Environmental Protection Energy Harvest Program; and

**WHEREAS**, the City of Reading desires to participate in said program to establish solar-powered lighting along the Schuylkill River and Wyomissing Creek Trails; and

**WHEREAS**, the City of Reading desires to enter into a certain Landowner-Grantee Agreement to facilitate entry upon its land for the work required to establish said solar-powered lighting and subsequent monitoring visits, maintenance, and other tasks.

**NOW, THEREFORE THE COUNCIL OF THE CITY OF READING HEREBY ORDAINS AS FOLLOWS:**

**SECTION 1.** The Mayor is authorized to execute the “Landowner-Grantee Agreement” between the City of Reading and the RiverPlace Development Corporation and/or the PA Department of Environmental Protection for the establishment and maintenance, etc. of solar-powered lighting along the Schuylkill River and Wyomissing Creek Trails (attached as Exhibit A).

**SECTION 2.** This Ordinance shall be effective ten (10) days after passage and approval by the Mayor, or as provided in the City of Reading’s Charter.

Enacted \_\_\_\_\_, 2007

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President of Council



CITY OF READING,  
PENNSYLVANIA

MEMORANDUM

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**TO:** Linda Kelleher, City Clerk  
**FROM:** Adam Mukerji, Community Development Manager  
**DATE:** March 28, 2007  
**SUBJECT:** Passage of a resolution authorizing the Mayor to execute a 2007 Action Plan amendment.

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CD is asking City Council to approve the amendment at the **May 14, 2007** City Council meeting.

**BACKGROUND:** Approximately \$950,000 in CDBG funding has been made available to re-program.

**BUDGETARY IMPACT:** None.

**PREVIOUS ACTION:** None.

**SUBSEQUENT ACTION:** None.

**RECOMMENDED BY:** Community Development Manager, Managing Director, and Mayor.

**RECOMMENDED MOTION:** The FFY2007 one year Action and FFY2004 to FFY2008 five year Consolidated Plans are amended.



Cc: L. Churchill  
N. Nemeth  
B. Skimski  
D. Witwer

RESOLUTION NO. \_\_\_\_\_

**RESOLUTION OF THE COUNCIL OF THE CITY OF READING  
AUTHORIZING THE MAYOR TO EXECUTE A  
FFY2007 ONE YEAR ACTION PLAN  
AND FFY2004 TO FFY2008 FIVE YEAR CONSOLIDATED PLAN  
AMENDMENT**

**WHEREAS**, under 24 CFR Part 91, the U.S. Department of Housing and Urban Development (HUD) outlines the consolidated submissions for community planning and development programs which will serve as: (1) a planning document for the City that builds on a participatory process at the grass roots level, (2) an application for federal funds under HUD's formula grant program, (3) a strategy to be followed in carrying out HUD programs, and (4) an Action Plan that provides a basis for assessing performance;

**WHEREAS**, the FFY2004 to FFY2008 five year Consolidated Plan (30<sup>th</sup> to 34<sup>th</sup> CD years January 1, 2004 to December 31, 2008) and the FFY2007 one year Action Plan (33rd CD year January 1, 2007 to December 31, 2007) have been prepared meeting HUD's requirements and providing guidance for addressing the housing and community development needs of the City;

**WHEREAS**, \$975,000 is available in CDBG funds to re-program for eligible and fundable activities.

**NOW, THEREFORE BE IT RESOLVED BY THE COUNCIL OF THE CITY OF READING THAT:**

**The FFY2007 one year Action and FFY2004 to FFY2008 five year Consolidated Plans are amended to reprogram CDBG funding for the following activities**

1. \$475,000 to purchase a fire truck known as Engine 1 located at the Rainbow/Junior Station 8th and Court Streets which has a service area composed of 76.4% low / moderate income persons.
2. \$475,000 to purchase a fire truck known as Engine 3 located at Keystone/Neversink Station 3rd and Court Streets which has a service area composed of 79.5% low / moderate income persons.

**Each activity's eligibility / fundability is low mod area 24CFR570.208(a)(1) / public facilities and improvements 24CFR570.201(c) and 24CFR570.207(b)(ii).**

**The Mayor, on behalf of the City of Reading, is authorized and directed to execute the amendment to the satisfaction of HUD.**

**PASSED COUNCIL MAY 14, 2007**

\_\_\_\_\_  
**PRESIDENT OF COUNCIL**

**RESOLUTION No. \_\_\_\_\_**

THE COUNCIL OF THE CITY OF READING HEREBY RESOLVES  
AS FOLLOWS:

Approve or Deny a Certificate of Appropriateness for the  
installation of a wrought iron security gate at the entrance way  
and wrought iron security bars on the front windows of 422 Penn  
Street

Adopted by Council \_\_\_\_\_, 2007

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Vaughn D. Spencer  
President of Council

Attest:

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Linda A. Kelleher  
City Clerk

**CITY OF READING  
PENNSYLVANIA**

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**RESOLUTION NO. \_\_\_\_\_**

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WHEREAS, the City of Reading, Pennsylvania (the "City"), heretofore has created the Reading Area Water Authority (the "Authority"), a body corporate and politic, incorporated pursuant to and governed by the Municipality Authorities Act, Act 22 of 2001, 53 Pa.C.S.A. Chapter 56, as amended and supplemented (the "Act"), of the Commonwealth of Pennsylvania (the "Commonwealth"), for the purpose of providing water service to the City and its surrounding communities; and

WHEREAS, in accordance with the terms of the Authority's Articles of Incorporation, the Authority has all of the powers provided for under the Act except that the Authority must receive the prior approval of the Council of the City ("Council") before undertaking projects not related to waterworks, water supply works or water distribution systems, or before undertaking any kind of project (water related or not) which involves the incurrence of any long-term debt; and

WHEREAS, the Authority desires to undertake certain capital projects in calendar year 2007, including the extension of water and sewer service and the construction of capital improvements to the Authority's water treatment, conveyance and distribution system (the "System"); and

WHEREAS, Council has determined that it is in the best interests of the City and its residents for the Authority to undertake such projects as more completely described herein, and

WHEREAS, the Council desires to endorse, authorize or approve such action as shall be necessary and appropriate.

NOW, THEREFORE, BE IT RESOLVED by the Council of this City, as follows:

1. This Council hereby (a) endorses the Authority's negotiation for the extension of potable water and wastewater service collection, conveyance and disposal services to the Borough of New Morgan, Berks County, Pennsylvania (the "New Morgan Project"), (b) approves and authorizes certain capital improvements, renovations and capital additions of and to the System (the "System Improvements and Expansion Projects"), and (3) the incurrence of long-term indebtedness in the amount of \$25,000,000.00 to finance the same (the "Financing Project," together with the New Morgan Project and the System Improvements and Expansion Projects, the "Projects"), and

2. These resolutions constitute conclusive evidence of consent by the City of Reading to the undertaking of the stated Projects. Further, this Council hereby authorizes the Mayor and/or the Finance Director of this City to take any and all other actions and do all things necessary and desirable assist the Authority in the completion of the Projects.

3. This Resolution shall become effective immediately.

4. In the event any provision, section, sentence, clause or part of this Resolution shall be held to be invalid, such invalidity shall not effect or impair any remaining provision, section, sentence, clause or part of this Resolution, it being the intent of this Council that such remainder shall be and shall remain in full force and effect.

5. All resolutions or parts of resolutions, insofar as the same shall be inconsistent herewith, shall be and the same expressly are hereby repealed.

DULY ADOPTED, this \_\_\_\_\_ day of May, 2007, by the Council of the City of Reading, Pennsylvania, in lawful session duly assembled.

**CITY OF READING**

**BY:** \_\_\_\_\_  
**PRESIDENT, COUNCIL OF THE CITY**

**ATTEST:** \_\_\_\_\_  
**CITY CLERK (SEAL)**

**R E S O L U T I O N O.**\_\_\_\_\_



THE COUNCIL OF THE CITY OF READING HEREBY RESOLVES  
AS FOLLOWS:

That Keith Singleton is appointed to the Minority Business  
Procurement Board, with a term ending May 14<sup>th</sup>, 2009.

Adopted by Council \_\_\_\_\_, 2007

\_\_\_\_\_  
Vaughn D. Spencer  
President of Council

Attest:

\_\_\_\_\_  
Linda A. Kelleher  
City Clerk

R E S O L U T I O N O. \_\_\_\_\_

THE COUNCIL OF THE CITY OF READING HEREBY RESOLVES  
AS FOLLOWS:

That Michael Rivera is appointed to the Minority Business  
Procurement Board, with a term ending May 14<sup>th</sup>, 2009.

Adopted by Council \_\_\_\_\_, 2007

\_\_\_\_\_  
Vaughn D. Spencer  
President of Council

Attest:

\_\_\_\_\_  
Linda A. Kelleher  
City Clerk

RESOLUTION. \_\_\_\_\_

THE COUNCIL OF THE CITY OF READING HEREBY RESOLVES  
AS FOLLOWS:

That Eligio Colon Jr. is reappointed to the Reading Area Housing  
Authority, with a term ending May 14<sup>th</sup>, 2012.

Adopted by Council \_\_\_\_\_, 2007

\_\_\_\_\_  
Vaughn D. Spencer  
President of Council

Attest:

\_\_\_\_\_  
Linda A. Kelleher  
City Clerk

RESOLUTION O. \_\_\_\_\_

THE COUNCIL OF THE CITY OF READING HEREBY RESOLVES  
AS FOLLOWS:

That Earl Kegerise is reappointed to the Plumbing Board, with a term  
ending December 31<sup>st</sup>, 2013.

Adopted by Council \_\_\_\_\_, 2007

\_\_\_\_\_  
Vaughn D. Spencer  
President of Council

Attest:

\_\_\_\_\_  
Linda A. Kelleher  
City Clerk

RESOLUTION O. \_\_\_\_\_

THE COUNCIL OF THE CITY OF READING HEREBY RESOLVES  
AS FOLLOWS:

That John Darlington is reappointed to the Reading Parking  
Authority, with a term ending December 31<sup>st</sup>, 2012.

Adopted by Council \_\_\_\_\_, 2007

\_\_\_\_\_  
Vaughn D. Spencer  
President of Council

Attest:

\_\_\_\_\_  
Linda A. Kelleher  
City Clerk

R E S O L U T I O N O. \_\_\_\_\_

THE COUNCIL OF THE CITY OF READING HEREBY RESOLVES  
AS FOLLOWS:

That Lee Olson is appointed to the Blighted Property Review  
Committee, with a term ending May 14<sup>th</sup>, 2009.

Adopted by Council \_\_\_\_\_, 2007

\_\_\_\_\_  
Vaughn D. Spencer  
President of Council

Attest:

\_\_\_\_\_  
Linda A. Kelleher  
City Clerk

BILL NO. \_\_\_\_\_-2007

**A N O R D I N A N C E**

**AMENDING CHAPTER 10 – HEALTH CODE OF  
THE CITY OF READING CODIFIED ORDINANCES  
BY ADDING A PART 12 TO CODIFY AND AMEND  
THE FOOD CODE ADOPTED BY BILL NO 33-2005**

**WHEREAS**, By Bill No 33- 2005 on May 9, 2005 the City of Reading through action of City Council adopted Chapter 46 of the Charter of the Pennsylvania Department of Agriculture as published by the Bureau of Food Safety and Laboratory Services, Division of Food Safety, December 13, 2003, commonly know as the Food Code.

**WHEREAS**, said ordinance provides for inspections of any sale of food, certification of inspectors, licensing fees and penalties for non-compliance.

**WHEREAS**, the City of Reading desires to enforce said Food Code and Ordinance through citation process.

**WHEREAS**, to enforce said Ordinance in said manner it must be codified.

**NOW THEREFORE THE CITY OF READING HEREBY ORDAINS AS FOLLOWS:**

**SECTION 1:** Chapter 10 – Health Code of the City of Reading Codified Ordinances is hereby amended to add a Part 12 to codify the Food Code adopted by the City of Reading on May 9, 2005 as Bill No 33-2005.

The Food Code amended as follows:

1. Renumbered to provide for codification, and
2. Amendments to the administrative and enforcement provisions to, include but not limited to, clarify the process for licensing and revocation thereof.

The aforesaid Amendments and the Food Code to be adopted per the same as Part 12 of Chapter to be known as the Food Code of the City of Reading is attached hereto as Exhibit A.

**SECTION 2:** All relevant ordinances, regulations and policies of the City of Reading, Pennsylvania not amended per the attached shall remain in full force and effect.

**SECTION 3:** All ordinances, regulations and policies of the City of Reading in direct contrast to this Ordinance, including but not limited to Chapter 13 Part 4 in its entirety, are hereby repealed.

**SECTION 4:** If any section, subsection, sentence or clause of this ordinance is held, for any reason, to be invalid, such decision shall not affect the validity of the remaining portions of the Ordinance.

**SECTION 5:** This Ordinance shall become effective in ten (10) days, in accordance with Charter Section 219.

Enacted \_\_\_\_\_, 2007

\_\_\_\_\_  
Council President

Attest:

\_\_\_\_\_  
City Clerk

Submitted to Mayor: \_\_\_\_\_

Date: \_\_\_\_\_

Received by the Mayor's Office: \_\_\_\_\_

Date: \_\_\_\_\_

Approved by Mayor: \_\_\_\_\_

Date: \_\_\_\_\_

Vetoed by Mayor: \_\_\_\_\_

Date: \_\_\_\_\_



# EXHIBIT A

## PURPOSE AND DEFINITIONS

### § 10-1200.01 Purpose.

The purpose of this chapter is to safeguard public health and ensure that consumers are provided food that is safe, unadulterated and honestly presented.

### § 10-1200.02 Scope.

This chapter establishes definitions; sets standards for management and personnel, food operations and equipment and facilities; and provides for food facility plan review, licensing, registration, inspection and employee restriction.

### § 10-1200.03 Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

*Additive*—A food additive or a color additive. *Adulterated*—Food with respect to which one or more of the following is accurate:

(i) The food bears or contains any poisonous or deleterious substance, which may render it injurious to health. However, if the substance is not an added substance, the food will not be considered adulterated if the quantity of the substance in the food does not ordinarily render it injurious to health.

(ii) The food bears or contains any added poisonous or added deleterious substance, which is unsafe within the meaning of section 11 of the Food Act (31 P. S. § 20.11). This subparagraph does not apply to a pesticide chemical in or on a raw agricultural commodity, a food additive or a color additive.

(iii) The food is a raw agricultural commodity and bears or contains a pesticide chemical which is unsafe within the meaning of section 11 of the Food Act, except that, when a pesticide chemical has been used in or on a raw agricultural commodity with an exception granted or tolerance prescribed under section 11 of the Food Act or under any of the Federal acts and the raw agricultural commodity has been subjected to processing such as canning, cooking, freezing, dehydrating or milling, the residue of the pesticide remaining in or on the processed food will, notwithstanding section 11 of the Food Act and this subparagraph, not be deemed unsafe if the residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice and the concentration of the residue in the processed food when ready to eat is not greater than the tolerance prescribed for the raw agricultural commodity.

(iv) The food bears or contains any food additive, which is unsafe within the meaning of section 11 of the Food Act or any of the Federal acts.

(v) The food consists in whole or in part of any diseased, contaminated, filthy, putrid or decomposed substance or is otherwise unfit for food.

(vi) The food has been produced, prepared, packed or held under unsanitary conditions so that it may have become contaminated with filth or may have been rendered diseased, unwholesome or injurious to health.

(vii) The food is, in whole or part, the product of a diseased animal or of an animal which has died otherwise than by slaughter.

(viii) The food is in a container composed, in whole or part, of any poisonous or deleterious substance which may render the contents injurious to health, unless the container is fabricated or manufactured with good manufacturing practices as that standard is defined and delineated by any of the Federal acts and their regulations.

(ix) The food has been intentionally subjected to radiation, unless the use of the radiation was in conformity with a regulation or exemption under section 11 of the Food Act or under one of the Federal acts.

(x) The food has had any valuable constituent, in whole or part, omitted or abstracted therefrom.

(xi) The food has had any substance substituted wholly or in part.

(xii) Damage or inferiority of the food is concealed in any manner.

(xiii) A substance has been added to the food and it is mixed or packed so as to increase its bulk or weight or reduce its quality or strength or make it appear better or of greater value than it is.

(xiv) The food bears or contains any color additive which is unsafe within the meaning of section 11 of the Food Act or under one of the Federal acts.

(xv) The food bears or contains eggs processed by or egg products derived from a manufacturing, processing or preparing method wherein whole eggs are broken using a centrifuge-type egg breaking machine that separates the egg's liquid interior from the shell.

*Approved*—Acceptable to the Department based on a determination of conformity with principles, practices and generally recognized standards proven to be scientifically sound that protect public health.

*Bakery*—Any food facility mixing typical baking ingredients and baking them into a new product for sale to the public including but not limited to facilities that prepare foods in

said manner either as its sole business or in addition to its retail or wholesale sale of food articles.

*Bed and breakfast homestead or inn*—A private residence which contains ten or fewer bedrooms used for providing overnight accommodations to the public, and in which breakfast is the only meal served and is included in the charge for the room.

*Beverage*—A liquid for drinking, including water.

*Bottled drinking water*—Water that is sealed in bottles, packages or other containers and offered for sale for human consumption. The term includes bottled mineral water.

*CFR*—The most-recently published edition or revision of the *Code of Federal Regulations*, a compilation of the general and permanent rules published in the *Federal Register* by the executive departments and agencies of the Federal government.

*CIP*—*Cleaned in place*—

(i) Cleaned in place by the circulation or flowing by mechanical means through a piping system of a detergent solution, water rinse and sanitizing solution onto or over equipment surfaces that require cleaning, such as the method used, in part, to clean and sanitize a frozen dessert machine.

(ii) The term does not include the cleaning of equipment such as band saws, slicers or mixers that are subjected to in-place manual cleaning without the use of a CIP system.

*Casing*—A tubular container for sausage products made of either natural or artificial (synthetic) material.

*Certification number*—A unique combination of letters and numbers assigned by the Department or other shellfish control authority having jurisdiction to a molluscan shellfish dealer according to the provisions of the National Shellfish Sanitation Program.

*Color additive*—A material which is a dye, pigment or other substance made by a process of synthesis or similar artifice or extracted, isolated or otherwise derived, with or without intermediate or final change of identity, from a vegetable, animal, mineral or other source and when added or applied to a food is capable, alone or through reaction with other substances, of imparting color thereto.

(i) The term includes black, white and intermediate grays.

(ii) The term does not include materials, which the Secretary, by regulation, determines are used, or are intended to be used, solely for a purpose other than coloring.

(iii) The term does not include any pesticide chemical, soil or plant

nutrient or other agricultural chemical solely because of its effect in aiding, retarding or otherwise affecting, directly or indirectly, the growth or otherwise natural physiological process of produce of the soil and thereby affecting its color, whether before or after harvest.

*Commingle*—To combine shellstock harvested on different days or from different growing areas as identified on the tag or label or to combine shucked shellfish from containers with different container codes or different shucking dates.

*Comminuted*—A food that is reduced in size by methods including chopping, flaking, grinding or mincing. The term includes fish or meat products that are reduced in size and restructured or reformulated such as gefilte fish, gyros, ground beef and sausage; and a mixture of two or more types of meat that have been reduced in size and combined, such as sausages made from two or more meats.

*Confirmed disease outbreak*—A foodborne disease outbreak in which laboratory analysis of appropriate specimens identifies a causative agent and epidemiological analysis implicates the food as the source of the illness.

*Consumer*—A person, who is a member of the public, takes possession of food, is not functioning in the capacity of an operator of a food facility or food processing plant, and does not offer the food for resale.

*Controlled atmosphere packaging*—A type of reduced oxygen packaging in which the atmosphere of a package of food is modified so that until the package is opened, its composition is different from air, and continuous control is maintained, such as by using oxygen scavengers or a combination of total replacement of oxygen, nonrespiring food and impermeable packaging material.

*Corrosion-resistant material*—A material that maintains acceptable surface cleanability characteristics under prolonged influence of the food to be contacted, the normal use of cleaning compounds and sanitizing solutions and other conditions of the use environment.

*Critical control point*—A point or procedure in a specific food system where loss of control may result in an unacceptable health risk.

*Critical limit*—The maximum or minimum value to which a physical, biological or chemical parameter must be controlled at a critical control point to minimize the risk that the identified food safety hazard may occur.

*Delicatessen / Deli* ---Any food facility taking raw and processed food preparing it in the establishment for consumption off premises including but not limited to facilities that

prepare foods in said manner either as its sole business or in addition to its retail or wholesale sale of food articles..

*Department*—The Department of Agriculture of the Commonwealth.

*Drinking water, potable water or water*—Safe drinking water as defined in the Pennsylvania Safe Drinking Water Act (35 P. S. §§ 721.1—721.17). The term does not include water such as boiler water, mop water, rainwater, wastewater and “nondrinking” water.

*Dry storage area*—A room or area designated for the storage of packaged or containerized bulk food that is not potentially hazardous and dry goods such as single service items.

*EPA*—The United States Environmental Protection Agency.

*Easily cleanable*—

(i) A characteristic of a surface that:

(A) Allows effective removal of soil by normal cleaning methods.

(B) Is dependent on the material, design, construction and installation of the surface.

(C) Varies with the likelihood of the surface’s role in introducing pathogenic or toxigenic agents or other contaminants into food based on the surface’s approved placement, purpose and use.

(ii) The term includes a tiered application of the criteria that qualify the surface as easily cleanable as specified in subparagraph (i) to different situations in which varying degrees of cleanability are required, such as one of the following:

(A) The appropriateness of stainless steel for a food preparation surface as opposed to the lack of need for stainless steel to be used for floors or for tables used for consumer dining.

(B) The need for a different degree of cleanability for a utilitarian attachment or accessory in the kitchen as opposed to a decorative attachment or accessory in the consumer dining area.

*Easily movable*—A unit of equipment that is both of the following:

(i) Portable; mounted on casters, gliders or rollers; or provided with a mechanical means to safely tilt the unit of equipment for cleaning.

- (ii) Has no utility connection, a utility connection that disconnects quickly or a flexible utility connection line of sufficient length to allow the equipment to be moved for cleaning of the equipment and adjacent area.

*Egg*—The shell egg of the domesticated chicken, turkey, duck, goose or guinea.

*Employee*—The license or registration holder, person in charge, person having supervisory or management duties, person on the payroll, family member, volunteer, person performing work under contractual agreement or other person working in a food facility.

*Equipment*—

- (i) An article that is used in the operation of a food facility such as a freezer, grinder, hood, ice maker, meat block, mixer, oven, reach-in refrigerator, scale, sink, slicer, stove, table, temperature measuring device for ambient air, vending machine or warewashing machine.

- (ii) The term does not include items used for handling or storing large quantities of packaged foods that are received from a supplier in a cased or overwrapped lot, such as hand trucks, forklifts, dollies, pallets, racks and skids.

*Exclude*—To prevent a person from working as a food employee or entering a food facility except for those areas open to the general public.

*FDA*—The United States Food and Drug Administration.

*Federal acts*—The Wholesome Meat Act (21 U.S.C.A. §§ 601—641), the Federal Food, Drug and Cosmetic Act (21 U.S.C. §§ 301—399), the Poultry Products Inspection Act (21 U.S.C.A. §§ 451—471), the Fair Packaging and Labeling Act (15 U.S.C.A. §§ 1451—1461), the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C.A. § 136—136y) and the Nutrition Labeling and Education Act of 1990 (21 U.S.C.A. § 343-1).

*Fish*—The term includes:

- (i) Fresh or saltwater finfish, crustaceans, all mollusks and other forms of aquatic life (including alligator, frog, aquatic turtle, jellyfish, sea cucumber, and sea urchin and the roe of those animals), other than birds or mammals, if the animal life is intended for human consumption.
- (ii) The term includes an edible human food product derived in whole or in part from fish, including fish that have been processed in any manner.

*Food*—An article used for food or drink by humans, including chewing gum and articles used for components of any article. The term does not include medicines and drugs.

*Food Act*—The Food Act (31 P. S. §§ 20.1—20.18).

*Food additive*—

(i) A substance, the intended use of which results or may reasonably be expected to result, directly or indirectly, in its becoming a component or otherwise

affecting the characteristics of any food, with respect to which one or more of the following is correct:

conditions (A) The substance is not generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures to be safe under the of its intended use.

food, (B) The substance has been used in food prior to January 1, 1958, and is not generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures or experience based on common use in to be safe under the conditions of its intended use.

(ii) The term does not include the following:

(A) A pesticide chemical in or on a raw agricultural commodity.

(B) A pesticide chemical to the extent that it is intended for use or is used in the production, storage or transportation of any raw agricultural commodity.

(C) A color additive.

(D) A substance used in accordance with a sanction or approval granted prior to the enactment of this subparagraph under a statute repealed by the Food Act, under the Poultry Products Inspection Act or under the Wholesome Meat Act.

(E) A new animal drug.

*Foodborne disease outbreak*—The occurrence of two or more cases of a similar illness after ingestion of a common food.



*Food-contact surface*—One of the following:

- (i) A surface of equipment or a utensil with which food normally comes into contact.
- (ii) A surface of equipment or a utensil from which food may drain, drip or splash into a food, or onto a surface normally in contact with food.

*Food employee*—An individual working with unpackaged food, food equipment or utensils, or food-contact surfaces.

*Food establishment*—

- (i) A retail food store and a room, building or place or portion thereof or vehicle maintained, used or operated for the purpose of commercially storing, packaging, making, cooking, mixing, processing, bottling, baking, canning, freezing, packing or otherwise preparing or transporting or handling food.
- (ii) The term includes those portions of public eating and drinking licensees which offer food for sale for off-premises consumption, except those portions of establishments operating exclusively under milk or milk products permits.

*Food facility*—A public eating or drinking place or a retail food establishment. The term does not include the following:

- (i) A food service facility provided by or at an organized camp or campground.
- (ii) A food service facility provided by or at a school.
- (iii) A food service facility at an institution such as a nursing home or hospital.
- (iv) Any other food service facility that is not a public eating or drinking place.
- (v) Food processing plants, warehousing establishments and other food establishments that comply with the following:
  - (A) Are not retail food establishments.
  - (B) Do not provide food to the consumer either directly or indirectly (such as through the home delivery of groceries).
  - (C) Applicable Federal regulations.

*Food facility operator*—The entity that is legally responsible for the operation of the food facility, such as the owner, owner's agent or other person.

*Food facility premises*—The food facility, its contents and the contiguous land or property under the control of the food facility operator. If a food facility is a component of a larger operation, such as a hotel, motel, shopping mall or public campground, and that larger operation is also under the control of the food facility operator, that larger operation is part of the food facility premises to the extent it may impact the food facility, its personnel or its operations.

*Food processing plant*—A commercial operation that manufactures, packages, labels or stores food for human consumption and does not provide food directly to a consumer. The term does not include a food facility.

*Game animal*—

(i) An animal, the products of which are food, that is not classified as any of the following:

(A) Fish, as that term is defined in this chapter.

(B) Cattle, sheep, swine, goat, horse, mule or other equine, as those terms are used in 9 CFR Chapter III, Subchapter A (relating to agency organization and terminology; mandatory meat and poultry products inspection and voluntary inspection and certification).

(C) Poultry, as that term is used in 9 CFR Chapter III, Subchapter A.

(D) Ratites, such as ostriches, emus or rheas.

(ii) The term includes mammals such as reindeer, elk, deer, antelope, water buffalo, bison, rabbit, squirrel, opossum, raccoon, nutria or muskrat, and nonaquatic reptiles such as land snakes.

*General use pesticide*—A pesticide that is not classified by the EPA for restricted use as specified in 40 CFR 152.175 (relating to pesticides classified for restricted use).

*HACCP—Hazard Analysis Critical Control Point*—A system developed by the National Advisory Committee on Microbiological Criteria for Foods that identifies and monitors specific foodborne hazards that can adversely affect the safety of the food products.

*HACCP plan*—A written document that delineates the formal procedures for following the HACCP principles developed by the National Advisory Committee on Microbiological Criteria for Foods.

*Hazard*—A biological, chemical or physical property (such as the presence of pathogens, pesticides, natural toxins, rodent contamination or foreign materials) that may cause an unacceptable consumer health risk.

*Hermetically sealed container*—A container that is designed and intended to be secure against the entry of microorganisms and, in the case of low acid canned foods, to maintain the commercial sterility of its contents after processing.

*High humidity cooking*—Cooking in an oven that attains relative humidity of greater than 90% for at least 1 hour as measured in the cooking chamber or exit of the oven, or cooking in a moisture-impermeable bag that provides 100% humidity.

*Highly susceptible population*—A group of persons who are more likely than other people in the general population to experience foodborne disease because both of the following conditions exist:

- (i) The group is comprised of immunocompromised persons, preschool-age children or older adults.
- (ii) The group obtains food at a facility that provides services such as custodial care, health care, assisted living services, nutritional services or socialization services. Examples of facilities providing these services include child or adult day care centers, health care centers, assisted living facilities, hospitals, nursing homes, kidney dialysis centers and senior centers.

*Honestly presented*—Food offered for human consumption in a way that does not mislead or misinform the consumer, and without misrepresenting the true appearance, color or quality of the food through the use of food or color additives, colored overwraps, lighting or other means.

*Imminent health hazard*—A significant threat or danger to health that is considered to exist when there is evidence sufficient to show that a product, practice, circumstance or event creates a situation that requires immediate correction or cessation of operation to prevent injury based on one or more of the following:

- (i) The number of potential injuries.
- (ii) The nature, severity and duration of the anticipated injury.

*Injected*—Manipulating a meat so that infectious or toxigenic microorganisms may be introduced from its surface to its interior through tenderizing with deep penetration or injecting the meat such as with juices which may be referred to as “injecting,” “pinning” or “stitch pumping.”

*Juice*—When used in the context of food safety, the term refers to the aqueous

liquid expressed or extracted from one or more fruits or vegetables, pure'es of the edible portions of one or more fruits or vegetables, or any concentrate of the liquid or pure'e. The term includes juice as a whole beverage, an ingredient of a beverage, and a puree as an ingredient of a beverage. This definition does not apply to standards of identity established by the FDA or USDA.

*Kitchenware*—Food preparation and storage utensils.

*License*—A grant to a licensee to operate a public eating or drinking place, as defined in the Public Eating and Drinking Places Law.

*Licensors*—Includes the following:

- (i) The county department of health or joint-county department of health, whenever the public eating or drinking place is located in a political subdivision which is under the jurisdiction of a county department of health or joint-county department of health.
- (ii) The health authorities of cities, boroughs, incorporated towns and first-class townships, whenever the public eating or drinking place is located in a city, borough, incorporated town or first-class township not under the jurisdiction of a county department of health or joint-county department of health.
- (iii) The health authorities of second class townships and second class townships which have adopted a home rule charter which elect to issue licenses under the Public Eating and Drinking Places Law whenever the public eating and drinking place is located in the second class township or second class township which has adopted a home rule charter not under the jurisdiction of a county department of health or joint-county department of health.
- (iv) The Department, whenever the public eating and drinking place is located in any other area of this Commonwealth.

*Linens*—Fabric items such as cloth hampers, cloth napkins, tablecloths, wiping cloths and work garments, including cloth gloves.

*mg/L*—Milligrams per liter, which is the metric equivalent of parts per million.

*Meat*—The flesh of animals used as food including the dressed flesh of cattle, swine, sheep or goats and other edible animals. The term does not include fish, poultry and wild game animals as specified under § 46.221(b) and (c) (relating to game animals).

*Milk Sanitation Law*—The act of July 2, 1935 (P. L. 589, No. 210) (31 P. S.

§§ 645—660e).

*Mobile food facility*—Any stationary, movable or temporary food facility—such as a stand, vehicle, cart, basket, box or similar structure from which food is stored, prepared, processed, distributed or sold—which physically locates at one site or location for no more than 14 consecutive days, whether operating continuously or not during this time. The term does not include a food facility that is physically located at one site for more than 14 consecutive days.

*Modified atmosphere packaging*—

(i) A type of reduced oxygen packaging in which the atmosphere of a package of food is modified so that its composition is different from air but the atmosphere may change over time due to the permeability of the packaging material or the respiration of the food.

(ii) The term includes: reduction in the proportion of oxygen, total replacement of oxygen or an increase in the proportion of other gases such as carbon dioxide or nitrogen.

*Molluscan shellfish*—An edible species of fresh or frozen oysters, clams, mussels and scallops or edible portions thereof, except when the scallop product consists only of the shucked adductor muscle.

*Nonpublic water supply*—A system for the provision of piped water for human consumption that is not a public water system.

*Other food regulatory agency*—Local bodies, State bodies other than the Commonwealth or Federal enforcement bodies having jurisdiction over a food establishment or food processing plant. Examples include the USDA with respect to most meat processing plants within this Commonwealth and the FDA having jurisdiction over food products imported from other countries.

*pH*—The symbol for the negative logarithm of the hydrogen ion concentration, which is a measure of the degree of acidity or alkalinity of a solution. Values between 0 and 7 indicate acidity and values between 7 and 14 indicate alkalinity. The value for pure distilled water is 7, which is considered neutral.

*Packaged*—

(i) Bottled, canned, cartoned, securely bagged or securely wrapped in a food facility or a food processing plant.

(ii) The term does not include a wrapper, carryout box or other nondurable container used to containerize food with the purpose of facilitating food protection during service and receipt of the food by the consumer.

*Pennsylvania Construction Code Act*—35 P. S. §§ 7210.101—7210.1103.

*Pennsylvania Sewage Facilities Act*—35 P. S. §§ 750.1—750.20a.

*Permanent food facility*—A food facility—whether stationary or mobile—that is not a temporary food facility operating more than 14 days in a single calendar year—whether these days are consecutive or not.

*Permit* – A license. The term license and permit are used interchangeably herein.

*Person*—A corporation, partnership, limited liability company, business trust, other association, government entity (other than the Commonwealth), estate, trust, foundation or natural person.

*Personal care items*—

(i) Items or substances that may be poisonous, toxic or a source of contamination and are used to maintain or enhance a person's health, hygiene or appearance.

(ii) The term includes items such as medicines, first aid supplies, cosmetics, toiletries (such as toothpaste and mouthwash) and similar items.

*Person in charge*—The individual present at a food facility responsible for the operation at the time of inspection.

*Physical facilities*—The structure and interior surfaces of a food facility, including accessories such as soap and towel dispensers and attachments such as light fixtures and heating or air conditioning system vents.

*Plumbing fixture*—A receptacle or device that is one or more of the following:

(i) Permanently or temporarily connected to the water distribution system of the premises and demands a supply of water from the system.

(ii) Discharges used water, waste materials or sewage directly or indirectly to the drainage system of the premises.

*Plumbing system*—The water supply and distribution pipes; plumbing fixtures and traps; soil, waste and vent pipes; sanitary and storm sewers and building drains, including their respective connections, devices and appurtenances within the premises; and water-treating equipment.

*Poisonous or toxic material*—A substance that is not intended for ingestion and that fits within one or more of the following categories:

(i) Cleaners and sanitizers, including cleaning and sanitizing agents and agents such as caustics, acids, drying agents, polishes and other chemicals.

(ii) Pesticides.

(iii) Substances necessary for the operation and maintenance of the establishment, such as nonfood grade lubricants, solvents and personal care items that may be deleterious to health.

(iv) Substances that are not necessary for the operation and maintenance of the establishment and are on the premises for retail sale, such as petroleum products and paints.

*Potentially hazardous food—*

(i) A food which consists, in whole or part, of milk or milk products, eggs, meat, poultry, fish, shellfish, edible crustacea or other ingredients, including synthetic ingredients, which is in a form capable of supporting rapid and progressive growth of infectious or toxigenic microorganisms.

(ii) The term does not include foods that have a pH level of 4.6 or below or a water activity of 0.85 or less under standard conditions or food products in hermetically sealed containers processed to maintain commercial sterility.

*Poultry—*One or more of the following:

(i) A domesticated bird (chickens, turkeys, ducks, geese or guineas), whether live or dead, as defined in 9 CFR Chapter III, Subchapter A, Part 381 (relating to poultry products inspection regulations).

(ii) A migratory waterfowl or game bird, such as pheasant, partridge, quail, grouse, guineas, pigeon or squab, whether live or dead, as defined in the USDA regulations in 9 CFR Part 362 (relating to voluntary poultry inspection regulations).

(iii) The term does not include ratites.

*Primal cut—*A basic major cut into which carcasses and sides of meat are separated, such as a beef round, pork loin, lamb flank or veal breast.

*Public eating or drinking place—*A place within this Commonwealth where food or drink is served to or provided for the public, with or without charge. The term does not include dining cars operated by a railroad company in interstate commerce or a bed and breakfast homestead or inn.

*Public Eating and Drinking Places Law—*The act of May 23, 1945 (P. L.

926, No. 369) (35 P. S. §§ 655.1—655.13).

*Public water system*—A system which provides water to the public for human consumption, and which has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year, or as otherwise specified in 25 Pa. Code Chapter 109 (relating to safe drinking water).

(i) The term includes collection, treatment, storage and distribution facilities under control of the operator of the system and used in connection with the system.

(ii) The term also includes a system which provides water for bottling or bulk hauling for human consumption.

*Ratite*—An animal belonging to the same family as ostriches, emus and rheas.

*Ready-to-eat food*—Any of the following types of food:

(i) Food in a form that is edible without additional preparation to achieve food safety, such as raw animal-derived foods that have been cooked in accordance with § 46.361 or § 46.362 (relating to cooking raw animal-derived foods; and microwave cooking), or fish that have been frozen in accordance with § 46.364 (relating to parasite destruction in fish other than molluscan shellfish by freezing), although additional preparation may occur for palatability or aesthetic, epicurean, gastronomic or culinary purposes.

(ii) Food that is raw or partially-undercooked animal-derived food, where the food facility offering the food has complied with § 46.361(d)(1) and the consumer notification requirements of § 46.423 (relating to consumer advisory required with respect to animal-derived foods that are raw, undercooked or not otherwise processed to eliminate pathogens), although additional preparation may occur for palatability or aesthetic, epicurean, gastronomic or culinary purposes.

(iii) Food that is prepared in accordance with a variance issued by the Department under § 46.361(d)(2) and § 46.1103 (relating to variances), although additional preparation may occur for palatability or aesthetic, epicurean, gastronomic or culinary purposes.

(iv) Raw fruits and vegetables that are washed in accordance with

(v) Fruits and vegetables that are cooked for hot holding in accordance with § 46.363 (relating to plant food cooking for hot holding).



(vi) Potentially hazardous food that is cooked in accordance with the time and temperature requirements for that specific food in §§ 46.361—46.363, and that is cooled as specified in § 46.384 (relating to potentially hazardous food: cooling).

(vii) Plant food with respect to which further washing, cooking or other processing is not required for food safety, and from which rinds, peels, husks or shells (if naturally present) are removed.

*Reduced oxygen packaging—*

(i) The reduction of the amount of oxygen in a package by removing oxygen; displacing oxygen and replacing it with another gas or combination of gases; or otherwise controlling the oxygen content to a level below that normally found in the surrounding 21% oxygen atmosphere.

(ii) A process as specified in subparagraph (i) that involves a food for which *Clostridium botulinum* is identified as a microbiological hazard in the final packaged form.

(iii) The term includes vacuum packaging, modified atmosphere packaging and controlled atmosphere packaging.

*Refuse—*Solid waste not carried by water through the sewage system.

*Registration—*A grant to a person to operate a food establishment within this Commonwealth as required by section 14 of the Food Act (31 P. S. § 20.14).

*Reg. Penna. Dept. Agr.—*An abbreviation connoting that a food bearing that abbreviation on its package label has been processed by a food establishment that is “registered with the Pennsylvania Department of Agriculture” in accordance with section 14(a) of the Food Act.

*Restrict—*To limit the activities of a food employee so that there is no risk of transmitting a disease that is transmissible through food and the food employee does not work with exposed food, clean equipment, utensils, linens and unwrapped single-service or single-use articles.

*Restricted egg—*Any check, dirty egg, incubator reject, inedible, leaker or loss as defined in Chapter 87 (relating to standards for grading and marketing eggs).

*Restricted use pesticide—*A pesticide classified for restricted use under section 3(d) of the Federal Insecticide, Fungicide and Rodenticide Act of 1947 (7 U.S.C.A. § 136(d)), or a pesticide designated by the Secretary for restricted

use under section 7(b)(6) of the Pennsylvania Pesticide Control Act of 1973 (3 P. S. § 111.27(b)(6)).

**Retail food establishment**—A food establishment which stores, prepares, packages, vends, offers for sale or otherwise provides food for human consumption and which relinquishes possession of food to a consumer directly, or indirectly, through a delivery service such as home delivery of grocery orders or delivery service provided by common carriers.

**Risk**—The likelihood that an adverse health effect will occur within a population as a result of a hazard in a food.

**Safe material**—One or more of the following:

- (i) An article manufactured from or composed of materials that may not reasonably be expected to result, directly or indirectly, in their becoming a component or otherwise affecting the characteristics of any food.
- (ii) An additive that is used as specified in section 409 or section 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C.A. §§ 301 and 376).
- (iii) A material that is not an additive and that is used in conformity with applicable regulations of the FDA.

**Sanitization**—The application of cumulative heat or chemicals on cleaned food-contact surfaces that, when evaluated for efficacy, is sufficient to yield a reduction of five logs, which is equal to a 99.999% reduction, of representative disease microorganisms of public health importance.

**Sealed**—Free of cracks or other openings that allow the entry or passage of moisture.

**Secretary**—The Secretary of the Department or an authorized representative, employee or agent of the Department.

**Service animal**—An animal such as a guide dog, signal dog or other animal individually trained to provide assistance to an individual with a disability.

**Servicing area**—An operating base location to which a mobile food facility or transportation vehicle returns regularly for things such as discharging liquid or solid wastes, refilling water tanks and ice bins and boarding food.

**Sewage**—A substance, which contains waste products or excrements or other discharges from the bodies of human beings or animals and any noxious or deleterious substance being harmful or inimical to the public health, or to animal or aquatic life, or to the use of water for domestic water supply or for recreation.

*Shellfish control authority*—A State, Federal, foreign, tribal or other government entity legally responsible for administering a program that includes certification of molluscan shellfish harvesters and dealers for interstate commerce.

*Shellfish permit*—A permit issued by the Department in accordance with Chapter 49 (relating to shellfish) and the National Shellfish Sanitation Program, that authorizes a person to operate a food establishment for shellfish.

*Shellfish permit holder*—The entity that meets the following conditions:

- (i) Is legally responsible for the operation of the food establishment such as the owner, owner's agent or other person.
- (ii) Possesses a valid shellfish permit to operate a shellfish food establishment.

*Shellstock*—Raw, in-shell molluscan shellfish.

*Shiga toxin-producing Escherichia coli*—Any E. coli capable of producing Shiga toxins, also called Verocytotoxins or Shiga-like toxins. This includes, but is not limited to, E. coli serotypes O157:H7, O157:NM and O157:H.

*Shucked shellfish*—Molluscan shellfish that have one or both shells removed.

*Single-service articles*—Tableware, carry-out utensils and other items such as bags, containers, place mats, stirrers, straws, toothpicks and wrappers that are designed and constructed for one time, one person consumer use after which they are intended for discard.

*Single-use articles*—

- (i) Utensils and bulk food containers designed and constructed to be used once and discarded.
- (ii) The term includes items such as wax paper, butcher paper, plastic wrap, formed aluminum food containers, jars, plastic tubs or buckets, bread wrappers, pickle barrels, ketchup bottles and number 10 cans which do not meet the materials, durability, strength and cleanability specifications in §§ 46.521(a), 46.541(a) and 46.542(a) and (b) (relating to materials in multiuse utensils and food-contact surfaces; durability and strength; and cleanability of multiuse food-contact surfaces and CIP equipment) for multiuse utensils.
- (iii) The term does not include formed aluminum containers used in conjunction with pan liners that may be reused to cook nonpotentially hazardous baked goods.

*Slacking*—The process of moderating the temperature of a food such as allowing a food to gradually increase from a temperature of -23°C (-10°F) to -4° C (25°F) in preparation for deep-fat frying or to facilitate even heat penetration during the cooking of previously block-frozen food such as spinach.

*Smooth*—One or more of the following:

- (i) A food-contact surface having a surface free of pits and inclusions with cleanability equal to or exceeding that of (100 grit) number-3 stainless steel.
- (ii) A nonfood-contact surface of equipment having a surface equal to that of commercial grade hot-rolled steel free of visible scale.
- (iii) A floor, wall or ceiling having an even or level surface with no roughness or projections that renders it difficult to clean.

*Substance*—A material intended for use in producing, manufacturing, packaging, processing, preparing, treating, transporting or holding food and any source of radiation intended for any use.

*Sulfiting agent*—A substance which imparts a residual of sulfur dioxide.

*Table-mounted equipment*—Equipment that is not portable and is designed to be mounted off the floor on a table, counter or shelf.

*Tableware*—Eating, drinking and serving utensils for table use such as plates, flatware (including forks, knives and spoons) and hollowware (including bowls, cups, serving dishes and tumblers).

*Temperature measuring device*—A thermometer, thermocouple, thermistor or other device that indicates the temperature of food, air or water.

*Temporary food facility*—A food facility that operates for a period of no more than 14 consecutive days in a fixed location and in conjunction with a single event or celebration (such as a fair, festival, carnival or other transitory gathering).

*Temporary license*—Either of the following:

- (i) A license that is the following:
  - (A) Issued to the operator of a temporary food facility.
  - (B) Valid for the duration of a particular event or celebration (such as a fair or carnival) of no more than 14 days duration (whether these days

are consecutive or nonconsecutive).

(C) Issued to the operator with respect to no more than three events or celebrations in a particular calendar year.

(ii) A license that is the following:

(A) Issued to a food facility operator operating a food facility, whether stationary or mobile.

(B) In operation for a total of no more than 14 days within a particular calendar year.

(C) Not in conjunction with an event or celebration.

*USDA*—The United States Department of Agriculture.

*Utensil*—A food-contact implement or container used in the storage, preparation, transportation, dispensing, sale or service of food. The term includes the following:

(i) Kitchenware or tableware that is multiuse, single-service or singleuse.

(ii) Gloves used in contact with food.

(iii) The temperature sensing probes of food temperature measuring devices.

(iv) Probe-type price or identification tags used in contact with food.

*Utility sink*—A sink used for the disposal of mop water or other similar liquid waste.

*Vacuum packaging*—A type of reduced oxygen packaging in which air is removed from a package of food and the package is hermetically sealed so that a vacuum remains inside the package, such as sous vide.

*Variance*—A written document issued by the Department that authorizes a modification or waiver of one or more requirements of this chapter if, in the opinion of the Department, a health hazard or nuisance will not result from the modification or waiver.

*Vending machine*—A self-service device that, upon insertion of a coin, paper currency, token, card or key, dispenses unit servings of food in bulk or in packages without the necessity of replenishing the device between each vending operation.

*Vending machine location*—The room, enclosure, space or area where one or more vending machines are installed and operated. The term includes the storage areas and areas on the premises that are used to service and maintain the vending machines.

*Warewashing*—The cleaning and sanitizing of food-contact surfaces of equipment and utensils.

*Water activity or aw*—A measure of the free moisture in a food, obtained by dividing the water vapor pressure of the substance by the vapor pressure of pure water at the same temperature. Water activity is typically indicated by the symbol aw.

*Water for human consumption*—The term includes water that is used for drinking, bathing and showering, cooking, dishwashing or maintaining oral hygiene.

*Whole-muscle, intact beef*—Whole muscle beef that is not injected, mechanically tenderized, reconstructed, or scored and marinated, from which beef steaks may be cut.

## **MANAGEMENT AND PERSONNEL SUPERVISION**

### **§ 10-1201.01. Designation of person in charge.**

The food facility operator shall be the person in charge or shall designate a person in charge and shall ensure that a person in charge is present at the food facility during all hours of operation.

### **§ 10-1201.02 Duties of the person in charge.**

The person in charge shall perform the following duties:

- (1) Ensure that food facility operations are not conducted in a private home where the food facility has not been approved by the Department, or in a room used as living or sleeping quarters as specified in § 10-1209.22(K) (relating to functionality of various physical facilities of a food facility).
- (2) Ensure that persons unnecessary to the food facility operation are not allowed in the food preparation, food storage or warewashing areas, except that brief visits and tours may be authorized by the person in charge if steps are taken to ensure that exposed food; clean equipment, utensils, linens and unwrapped single-service and single-use articles are protected from contamination.
- (3) Ensure that employees and other persons (such as delivery and maintenance persons and pesticide applicators) entering the food preparation, food

storage and warewashing areas comply with this chapter.

(4) Routinely monitor employee handwashing to ensure that employees effectively clean their hands.

(5) Routinely monitor employee observations and periodically evaluate foods upon receipt to ensure that employees visibly observe foods as they are received to determine that they are from approved sources, delivered at the required temperatures, protected from contamination, unadulterated and accurately presented.

(6) Conduct daily oversight of the employees' routine monitoring of cooking temperatures using appropriate temperature measuring devices properly scaled and calibrated in accordance with §§ 10-1205.61 and 10-1206.91(B) (relating to accuracy of temperature measuring devices for food; and utensils and temperature and pressure measuring devices: repair and calibration), to ensure the employees are properly cooking potentially hazardous food, and are being particularly careful in cooking those foods known to cause severe foodborne illness and death, such as eggs and comminuted meats.

(7) Conduct daily oversight of the employees' routine monitoring of food temperatures during cooling, to ensure that employees are using proper methods to rapidly cool potentially hazardous foods that are not held hot or are not for consumption within 4 hours.

(8) Ensure that consumers who order raw or partially cooked ready-to-eat foods of animal origin are informed, in accordance with § 10-1204.23 (relating to consumer advisory required with respect to animal-derived foods that are raw, undercooked or not otherwise processed to eliminate pathogens), that the food is not cooked sufficiently to ensure its safety.

(9) Routinely monitor solution temperature and exposure time for hot water sanitizing, and chemical concentration, pH, temperature and exposure time for chemical sanitizing, to ensure that employees properly sanitize cleaned multiuse equipment and utensils before they are reused.

(10) Ensure that consumers are notified that clean tableware is to be used when they return to self-service areas such as salad bars and buffets, in accordance with § 10-1203.06 (relating to using clean tableware for second portions and refills).

(11) Ensure that employees prevent cross contamination of ready-to-eat food with bare hands by properly using suitable utensils, such as deli tissue, spatulas, tongs, single-use gloves or dispensing equipment, or by following a procedure approved under § 10-1202.61(D) (relating to preventing contamination from food employees' hands).

(12) Ensure that employees are properly trained in food safety as it relates to their assigned duties.

## **EMPLOYEE HEALTH**

### **§ 10-1201.11 Duty to report disease or medical condition.**

*(A) Responsibility of a food facility operator to require reporting.*

A food facility operator shall require a food employee and a food employee applicant to whom a conditional offer of employment is made to report to the person in charge information about their health and activities as they relate to diseases described in § 10-1201.12 (relating to diseases or medical conditions that must be reported) or diseases that are transmissible through food.

*(B) Responsibility of a person in charge to report information to Department.*

The person in charge shall notify the Department that a food employee is diagnosed with an illness due to *Salmonella typhi*, *Shigella* spp., Shiga toxin-producing *Escherichia coli* or hepatitis A virus.

*(C) Responsibilities of a food employee or food employee applicant.* A food employee or a person who applies for a job as a food employee shall report to the person in charge the information specified in this section in a manner that allows the person in charge to prevent the likelihood of foodborne disease transmission.

This information includes the date of onset of jaundice or the date of onset of any illness or condition specified in § 46.112.

### **Cross References**

This section cited in 7 Pa. Code § 46.1144 (relating to conditions of retention: responsibilities of the food facility operator).

### **§ 10-1201.12 Diseases or medical conditions that must be reported.**

A food employee or food employee applicant shall report the following diseases, medical conditions or special circumstances to the person in charge:



(1) A diagnosis of an illness due to any of the following:

- (i) *Salmonella typhi*.
- (ii) *Shigella* spp.
- (iii) Shiga toxin-producing *Escherichia coli*.
- (iv) Hepatitis A virus.

(2) A past illness from any of the following:

- (i) *Salmonella typhi* within the past 3 months.
- (ii) *Shigella* spp. within the past month.
- (iii) Shiga toxin-producing *Escherichia coli* within the last month.
- (iv) Hepatitis A virus.

(3) A symptom caused by illness, infection or other source, where that symptom is associated with an acute gastrointestinal illness such as any of the following:

- (i) Diarrhea.
- (ii) Fever.
- (iii) Vomiting.
- (iv) Jaundice.
- (v) Sore throat with fever.

(4) A lesion containing pus such as a boil or infected wound that is open or draining and is any of the following:

- (i) On the hands or wrists, unless an impermeable cover such as a finger cot or stall protects the lesion and a single-use glove is worn over the impermeable cover.
- (ii) On exposed portions of the arms, unless the lesion is protected by an impermeable cover.
- (iii) On other parts of the body, unless the lesion is covered by a dry,

durable, tight-fitting bandage.

(5) The food employee or food employee applicant is suspected of causing a confirmed disease outbreak caused by *S. typhi*, *Shigella* spp., Shiga toxin-producing

*Escherichia coli* or hepatitis A virus, including an outbreak at an event such as a family meal, church supper or festival because the food employee or applicant prepared food implicated in the outbreak.

(6) The food employee or food employee applicant is suspected of being exposed to a confirmed disease outbreak caused by *S. typhi*, *Shigella* spp., Shiga toxin-producing *Escherichia coli* or hepatitis A virus, including an outbreak at an event such as a family meal, church supper or festival because the food employee or applicant did either of the following:

(i) Consumed food implicated in the outbreak.

(ii) Consumed food at the event prepared by a person who is infected or ill with the infectious agent that caused the outbreak or who is suspected of being a shedder of the infectious agent.

(7) The food employee or food employee applicant lives in the same household as a person who is diagnosed with a disease caused by *S. typhi*, *Shigella* spp., Shiga toxin-producing *Escherichia coli* or hepatitis A virus, and knows of that diagnosis.

(8) The food employee or food employee applicant lives in the same household as a person who attends or works in a setting where there is a confirmed disease outbreak caused by *S. typhi*, *Shigella* spp., Shiga toxin-producing *Escherichia coli* or hepatitis A virus, and knows of that outbreak.

### **Cross References**

This section cited in 7 Pa. Code § 46.111 (relating to duty to report disease or medical condition);

7 Pa. Code § 46.113 (relating to duty to impose exclusions and restrictions); and 7 Pa. Code § 46.115

(relating to removing exclusions and restrictions).

### **§ 10-1201.13 Duty to impose exclusions and restrictions.**

(A) *General exclusions and restrictions.* A person in charge shall impose the following exclusions and restrictions:

to (1) Exclude a food employee from a food facility if the food employee is diagnosed with an infectious agent specified in § 10-1201.12(1) (relating diseases or medical conditions that must be reported).

(2) Restrict a food employee from working with exposed food; clean equipment, utensils, linens and unwrapped single-service and single-use articles, in a food facility if the food employee is either of the following:

(i) Experiencing a symptom specified in § 10-1201.12(3) or (4).

is (ii) Not experiencing a symptom of acute gastroenteritis specified in § 10-1201.12(3), but has a stool that yields a specimen culture that producing positive for Salmonella typhi, Shigella spp. or Shiga toxin-producing Escherichia coli.

(B) *Special exclusions with respect to a food employee who is jaundiced.* If a food employee is jaundiced, the person in charge shall exclude the food employee as a food handler until 7 days after the onset of jaundice. If a food employee is jaundiced more than 7 days after onset, the person in charge shall restrict the food employee from working with exposed food and clean equipment, utensils, linens and unwrapped single service and single use articles in a food facility.

(C) *Special exclusions with respect to a food facility serving a highly susceptible population.* If the population served by the food facility is a highly susceptible population, a person in charge shall impose any exclusions or restrictions required under subsection (A) and also exclude a food employee from the food facility if the food employee is any of the following:

10- (1) Experiencing a symptom of acute gastrointestinal illness specified in § 10-1201.12(3) and meets any of the high-risk conditions specified in § 1201.12(5), (6), (7) or (8).

positive for (2) Is not experiencing a symptom of acute gastroenteritis specified in § 10-1201.12(3), but has a stool that yields a specimen culture that is S. typhi, Shigella spp. or Shiga toxin-producing Escherichia coli.

(3) Had a past illness from S. typhi within the last 3 months.

Escherichia (4) Had a past illness from Shigella spp. or Shiga toxin-producing coli within the last month.

(5) Jaundiced, regardless of the time of onset.

## **Cross References**

This section cited in 7 Pa. Code § 46.114 (relating to duty to comply with exclusions and restrictions);

7 Pa. Code § 46.115 (relating to removing exclusions and restrictions); and 7 Pa. Code § 46.441 (relating to discarding or reconditioning unsafe, adulterated or contaminated food).

### **§10-1201.14 Duty to comply with exclusions and restrictions.**

A food employee or a person who applies for a job as a food employee shall comply with exclusions and restrictions that are imposed by the person in charge under authority of § 10-1201.13 (relating to duty to impose exclusions and restrictions).

### **§ 10-1201.15 Removing exclusions and restrictions.**

(A) *Disease or medical condition described in § 10-1201.12(1).* A person in charge may not remove an exclusion imposed as a result of a disease or medical condition described in § 10-1201.12(1) (relating to diseases or medical conditions that

must be reported) unless the excluded person provides the person in charge written

medical documentation specifying that the excluded person may work in an unrestricted capacity in a food facility, including a facility that serves a highly susceptible population, because the person is free of the infectious agent of concern.

This documentation shall be from a physician licensed to practice medicine, a licensed nurse practitioner or a licensed physician assistant.

(B) *Disease or medical condition with respect to which restrictions are imposed under § 10-1201.13(A)(2)(i).* A person in charge may not remove a restriction

imposed under authority of § 10-1201.13(A)(2)(i) (relating to duty to impose exclusions and restrictions) as a result of a disease or medical condition unless

at

least one of the following is accurate:

(4), (1) The person is free of the symptoms specified in § 10-1201.12(3) and  
restricted and no foodborne illness occurs that may have been caused by the  
person.

(2) The person is suspected of causing foodborne illness, but both of the following are true:

and (i) The person is free of the symptoms specified in § 10-1201.12(3)  
(4).

physician (ii) The person provides written medical documentation from a  
licensed to practice medicine, a licensed nurse practitioner or a  
licensed physician assistant stating that the restricted person is free of the  
infectious agent that is suspected of causing the person's symptoms or  
causing foodborne illness.

(3) The restricted person provides written medical documentation from a  
physician licensed to practice medicine, a licensed nurse practitioner or a  
licensed physician assistant stating that the symptoms experienced result  
from a chronic noninfectious condition such as Crohn's disease, irritable bowel  
syndrome or ulcerative colitis.

(C) *Disease or medical condition with respect to which restrictions are  
imposed under authority of § 10-1201.13(A)(2)(ii).* A person in charge may not  
remove a restriction imposed as a result of a disease or medical condition  
imposed under authority of § 10-1201.13(A)(2)(ii) unless the restricted person  
provides written medical documentation from a physician licensed to practice medicine,  
a licensed nurse practitioner or a licensed physician assistant that indicates  
the restricted person's stools are free from Salmonella typhi, Shigella spp. or  
Shiga toxin-producing Escherichia coli—whichever is the infectious agent of  
concern.

(D) *Disease or medical condition with respect to which exclusions or restrictions  
are imposed under authority of § 10-1201.13(B).* A person in charge may not  
remove an exclusion or restriction imposed as a result of a disease or medical  
condition described in § 10-1201.13(B) unless the excluded or restricted person  
provides written medical documentation from a physician licensed to practice medicine,  
a licensed nurse practitioner or a licensed physician's assistant that specifies  
that the person is free of hepatitis A virus.

(E) *Disease or medical condition with respect to which exclusions are  
imposed under authority of §10-1201.13(C).* A person in charge may not remove  
an exclusion imposed with respect to a food facility serving a highly susceptible  
population as a result of a disease or medical condition described in § 10-  
1201.13(C)

unless the restricted person provides written medical documentation from a physician licensed to practice medicine, a licensed nurse practitioner or a licensed physician's assistant that states, as applicable, that the person is:

- (1) Free of the infectious agent of concern.
- (2) Free of jaundice, if hepatitis A virus is the infectious agent of concern.
- (3) Experiencing symptoms resulting from a chronic noninfectious condition such as Crohn's disease, irritable bowel syndrome or ulcerative colitis.

## **PERSONAL CLEANLINESS**

### **§ 10-1201.31 Cleanliness of hands and exposed portions of arms.**

(A) *Responsibility of food employees.* Food employees shall keep their hands and exposed portions of their arms clean.

(B) *Cleaning procedure.*

(1) *General procedure.* Except as specified in paragraph (2), food employees shall clean their hands and exposed portions of their arms (or surrogate prosthetic devices for hands or arms) for at least 20 seconds using a cleaning compound in a handwashing sink that is equipped as specified in § 10-1208.22(B) (relating to design, construction and installation of plumbing systems) by using the following cleaning procedure:

(i) Create vigorous friction on the surfaces of the lathered fingers, tips, areas between the fingers, hands and arms (or by vigorously rubbing the surrogate prosthetic devices for hands and arms) for at least 10—15 seconds.

(ii) Thoroughly rinse under clean running, warm water.

(iii) Immediately follow the rinse with thorough drying of cleaned hands and arms (or surrogate prosthetic devices) using a method specified in

§ 10-1209.41(C) (relating to handwashing facilities: numbers and capacities).

(iv) Employees shall pay particular attention to the areas underneath the fingernails and between the fingers during this cleaning procedure.

(2) *Alternative procedure.* An automatic handwashing facility may be used by food employees to clean their hands if the facility is approved and capable of removing the types of soils encountered in the food operations involved.

### **Cross References**

This section cited in 7 Pa. Code § 46.132 (relating to duty of food employees to wash); 7 Pa. Code § 46.134 (relating to hand sanitizers); 7 Pa. Code § 46.153 (relating to animals); and 7 Pa. Code § 46.261 (relating to preventing contamination from food employees' hands).

### **§10-1201.32 Duty of food employees to wash.**

Food employees shall clean their hands and exposed portions of their arms as specified in §10-1201.31 (relating to cleanliness of hands and exposed portions of arms) as follows:

- (1) Immediately before engaging in food preparation activities such as working with exposed food, working with clean equipment and utensils, and working with unwrapped single-service and single-use articles.
- (2) After touching bare human body parts other than clean hands and clean, exposed portions of arms.
- (3) After using the toilet room.
- (4) After caring for or handling service animals or aquatic animals as specified in § 10-1201.53(B) (relating to animals).
- (5) Except as specified in § 10-1201.51(A)(2) (relating to food contamination prevention), after coughing, sneezing, using a handkerchief or disposable tissue, using tobacco, eating or drinking.
- (6) After handling soiled equipment or utensils.
- (7) During food preparation, as often as necessary to remove soil and contamination and to prevent cross contamination when changing tasks.
- (8) When switching between working with raw food and working with ready-to-eat food.

(9) Before donning gloves for working with food.

(10) After engaging in other activities that contaminate the hands.

### **Cross References**

This section cited in 7 Pa. Code § 46.153 (relating to animals).

### **§10-1201.33. Required washing locations.**

Food employees shall clean their hands in a handwashing sink or approved automatic handwashing facility. Food employees may not clean their hands in a sink used for food preparation or warewashing, or in a utility sink or a curbed cleaning facility used for the disposal of mop water and similar liquid waste.

### **§10-1201.34 Hand sanitizers.**

(A) *Requirements.* A hand sanitizer and a chemical hand sanitizing solution used as a hand dip shall:

(1) Comply with one or more of the following:

publication (i) Be an approved drug that is listed in the most current FDA  
as *Approved Drug Products with Therapeutic Equivalence Evaluations*  
an approved drug based on safety and effectiveness.

current (ii) Have active antimicrobial ingredients that are listed in the most  
FDA monograph for OTC (over-the-counter) Health-Care Antiseptic  
Drug Products as an antiseptic handwash.

(2) Comply with one or more of the following:

being (i) Have components that are exempted from the requirement of  
170.39 listed in Federal food additive regulations as specified in 21 CFR  
contact (relating to threshold of regulation for substances used in food-  
articles).

(ii) Comply with, and be listed in, one or more of the following:



a food (a) 21 CFR 178 (relating to indirect food additives: adjuvants, production aids, and sanitizers as regulated for use as additive with conditions of safe use).

as affirmed as (relating to indirect recognized as safe). (b) 21 CFR 182 (relating to substances generally recognized safe), 21 CFR 184 (relating to direct food substances generally recognized as safe) or 21 CFR 186 food substances affirmed as generally

contact direct (iii) Be limited to situations when use is followed by a thorough hand rinsing in clean water before hand contact with food, or when hand contact with food is avoided by the use of gloves, or where there is no contact with food by bare hands.

1201.31(B) (3) Be applied only to hands that are cleaned as specified in § 10-1201.31(B) (relating to cleanliness of hands and exposed portions of arms).

(B) *Chemical hand sanitizing solution.* A chemical hand sanitizing solution used as a hand dip shall be maintained clean and at a strength equivalent to at least 100 mg/L (ppm) chlorine.

#### **§10-1201.35. Cleanliness of fingernails.**

(A) *General.* Food employees shall keep their fingernails trimmed, filed and maintained so the edges and surfaces are cleanable and not rough.

fingernails (B) *Fingernail polish and artificial fingernails.* Unless wearing intact gloves in good repair, a food employee may not wear fingernail polish or artificial fingernails when working with exposed food.

#### **§10-1201.36 Jewelry.**

Food employees may not wear jewelry (including medical information jewelry) on their arms and hands while preparing food. This prohibition does not apply to a plain ring such as a wedding band.

#### **§ 10-1201.37 Cleanliness of outer clothing.**

Food employees shall wear clean outer clothing to prevent contamination of food, equipment, utensils, linens, single-service articles and single-use articles.

### **HYGIENIC PRACTICES**

## **§10-1201.51 Food contamination prevention.**

(A) *Eating, drinking or using tobacco.*

(1) *General prohibition.* An employee may not eat, drink or use any form of tobacco unless the use occurs in designated areas where the contamination of exposed food; clean equipment, utensils and linens; unwrapped single-service and single-use articles; or other items needing protection cannot result. The sole exception to this prohibition is in paragraph (2).

(2) *Exception for closed beverage containers.* A food employee may drink from a closed beverage container if the container is handled to prevent contamination of the following:

- (i) The employee's hands.
- (ii) The container.
- (iii) Exposed food; clean equipment, utensils and linens; and unwrapped single-service and single-use articles.

(B) *Discharges from the eyes, nose and mouth.* Food employees experiencing persistent sneezing, coughing or a runny nose that causes discharges from the eyes, nose or mouth may not work with exposed food; clean equipment, utensils and linens; or unwrapped single-service or single-use articles.

## **Cross References**

This section cited in 7 Pa. Code § 46.132 (relating to duty to food employees to wash).

## **§10-1201.52 Hair restraints.**

(A) *General requirement.* Employees shall wear hair restraints such as hats, hair coverings or nets, beard restraints and clothing that covers body hair, that are effectively designed and worn to keep their hair from contacting exposed food; clean equipment, utensils and linens; and unwrapped single-service and single-use articles.

(B) *Exception.* This section does not apply to food employees who present a minimal risk of contaminating exposed food, clean equipment, utensils, linens and unwrapped single-service and single-use articles. These food employees may

include employees such as counter staff who only serve beverages and wrapped or packaged foods, hostesses and wait staff.

### **§10-1201.53 Animals.**

(A) *Circumstances under which handling of animals is prohibited.* Food employees may not care for or handle animals that may be present such as patrol dogs, service animals or pets that are allowed as specified in § 10-1209.82 (relating to limitations on animals).

(B) *Circumstances under which handling of animals is permissible.* Employees with service animals may handle or care for their service animals and food employees may handle or care for fish in aquariums or molluscan shellfish or crustacea in display tanks if they wash their hands as specified in §§ 10-1201.31(B) and 10-1201.32 (relating to cleanliness of hands and exposed portions of arms; and duty of food employees to wash).

### **Cross References**

This section cited in 7 Pa. Code § 46.132 (relating to duty of food employees to wash).

## **FOOD CHARACTERISTICS**

### **§ 10-1202.01 Food shall be safe, unadulterated and honestly presented.**

Food shall be safe, unadulterated and—in accordance with § 10-1204.21(B) (relating to accurate representation)—honestly presented.

### **Cross References**

This section cited in 7 Pa. Code § 46.441 (relating to discarding or reconditioning unsafe, adulterated or contaminated food); 7 Pa. Code § 46.584 (relating to vending machines); and 7 Pa. Code § 46.632 (relating to food temperature measuring devices).

## **FOOD SOURCES**

### **§10-1202.11 Food sources.**

Food shall be obtained from sources that comply with the Food Act, the Public Eating and Drinking Places Law and this chapter. Records of food sources shall be maintained and made available for review upon request by the Department.

### **Cross References**

This section cited un 7 Pa. Code § 46.441 (relating to discarding or reconditioning unsafe, adulterated or contaminated food).

#### **§10-1202.12 Food prepared in a private home.**

Food prepared in a private home, not approved by the Department, may not be used or offered for human consumption in a food facility.

#### **Cross References**

This section cited in 7 Pa. Code § 46.441 (relating to discarding or reconditioning unsafe, adulterated or contaminated food).

#### **§10-1202.13 Packaged food.**

Packaged food shall be labeled as specified in § 10-1204.22 (relating to labeling).

#### **Cross References**

This section cited in 7 Pa. Code § 46.441 (relating to discarding or reconditioning unsafe, adulterated or contaminated food).

#### **§10-1202.14 Whole-muscle, intact beef.**

Whole-muscle, intact beef steaks that are intended for consumption in an undercooked form without a consumer advisory as specified in § 10-1203.61(C) (relating to cooking raw animal-derived foods) shall be one of the following:

- (1) Obtained from a food establishment that either packages the steaks and labels them to indicate that they meet the definition of whole-muscle, intact beef or provides an invoice or other documentation indicating that the steaks meet that definition.
- (2) Individually cut in a food facility, and all of the following:
  - (i) Cut from whole-muscle intact beef that is labeled or documented by a food establishment to indicate that the beef meets the definition of “wholemuscle intact beef” as specified in paragraph (1).
  - (ii) Prepared so they remain intact.
  - (iii) If packaged for undercooking in a food facility, labeled or documented to indicate that they meet the definition of “whole-muscle, intact beef” as specified in paragraph (1).

#### **Cross References**

This section cited in 7 Pa. Code § 46.361 (relating to cooking raw animal-derived foods); 7

Pa. Code § 46.441 (relating to discarding or reconditioning unsafe, adulterated or contaminated food).

**§10-1202.15 Packaged meat and poultry that is not a ready-to-eat food.**

Meat and poultry that is not a ready-to-eat food and is in a packaged form when it is offered for sale or otherwise offered for consumption shall be labeled to include safe handling instructions as specified in the Food Act, including 9 CFR

**Cross References**

This section cited in 7 Pa. Code § 46.441 (relating to discarding or reconditioning unsafe, adulterated or contaminated food).

**§10-1202.16 Food in a hermetically sealed container.**

Food in a hermetically sealed container shall be obtained from a food establishment that is regulated by the Department or other food regulatory agency that has jurisdiction over the food processing plant.

**Cross References**

This section cited in 7 Pa. Code § 46.441 (relating to discarding or reconditioning unsafe, adulterated or contaminated food).

**§10-1202.17 Milk and milk products.**

Milk and milk products shall be obtained from sources that comply with section 2 of the Milk Sanitation Law (31 P. S. § 646).

**Cross References**

This section cited in 7 Pa. Code § 46.441 (relating to discarding or reconditioning unsafe, adulterated or contaminated food).

**§10-1202.18 Fish.**

(A) *Sources.* Fish that are received for sale or service shall be one of the following:

(1) Commercially and legally caught or harvested.

(2) Approved for sale or service.

(B) *Nonmolluscan fish for raw consumption.* Fish, other than molluscan shellfish, that are intended for consumption in their raw form and allowed as specified in § 10-1203.61(D)(1) (relating to cooking raw animal-derived foods) may not be offered for sale or service unless they are obtained from a supplier that freezes

the fish as specified in § 10-1203.64(A) and (B) (relating to parasite destruction in fish other than molluscan shellfish by freezing) or frozen on the premises as specified in § 10-1203.64(A) and (B) and records are retained as specified in § 10-1203.64(C).

### **Cross References**

This section cited in 7 Pa. Code § 46.441 (relating to discarding or reconditioning unsafe, adulterated or contaminated food).

### **§10-1202.19 Molluscan shellfish.**

(A) *Sources.* Molluscan shellfish shall be obtained from sources that are in compliance with section 14 of the Food Act (31 P. S. § 20.14), Chapter 49 (relating to shellfish) and this subchapter, and the requirements specified in the United States Department of Health and Human Services, Public Health Service, Food and Drug Administration, National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish.

(B) *Molluscan shellfish received or intended for sale in interstate commerce.* Molluscan shellfish received or intended for sale in interstate commerce shall be from sources that are listed in the Interstate Certified Shellfish Shippers List.

(C) *Molluscan shellfish that are recreationally caught.* Molluscan shellfish that are recreationally caught may not be received for sale or service.

### **Cross References**

This section cited in 7 Pa. Code § 46.441 (relating to discarding or reconditioning unsafe, adulterated or contaminated food).

### **§10-1202.20 Wild mushrooms.**

(A) *General source requirement.* Mushroom species picked in the wild shall be obtained from sources where each mushroom is individually inspected and found to be safe by a mushroom identification expert. The exceptions to this requirement are in subsection (B).

(B) *Exceptions.* Subsection (A) does not apply to the following:

(1) Cultivated wild mushroom species that are grown, harvested and processed in an operation that is regulated by the Department or other food regulatory agency that has jurisdiction over the operation.

product (2) Wild mushroom species if they are in packaged form and are the  
food of a food processing plant that is regulated by the Department or other  
regulatory agency that has jurisdiction over the food processing plant.

### **Cross References**

This section cited in 7 Pa. Code § 46.441 (relating to discarding or reconditioning unsafe, adulterated or contaminated food).

### **§10-1202.21 Game animals.**

(A) *Game animals commercially raised for food.* If game animals commercially raised for food are received for sale or service they shall be at least one of the following:

program (1) Raised, slaughtered and processed under a voluntary inspection  
and administered by the USDA for game animals such as exotic animals  
CFR (reindeer, elk, deer, antelope, water buffalo or bison) that are “inspected  
Program in approved” in accordance with the Voluntary Exotic Animal Program in 9  
352 (relating to exotic animals; voluntary inspection) or rabbits that are  
“inspected and certified” in accordance with the Rabbit Inspection  
9 CFR 354 (relating to voluntary inspection of rabbits and edible products  
thereof).

raised, (2) Under a routine inspection program conducted by the Department or  
other food regulatory agency that has animal health jurisdiction, and  
slaughtered and processed according to both of the following:

Department (i) Laws governing meat and poultry, as determined by the  
or other food regulatory agency that has animal health jurisdiction.  
food (ii) Requirements which are developed by the Department or other  
regulatory agency that has animal health jurisdiction, with  
consideration of factors such as the need for antemortem and postmortem  
examination by a licensed veterinarian or veterinarian’s designee.

(B) *Wild game animals that are live-caught.* Wild game animals that are livecaught may not be received for sale or service unless all of the following apply:

(1) The animal is under a routine inspection program conducted by the Department or other regulatory agency that has animal health jurisdiction.

(2) The animal is slaughtered and processed according to the following:

Department  
food  
consideration of  
examination by a

(i) Laws governing meat and poultry, as determined by the  
or other food regulatory agency that has animal health jurisdiction.

(ii) Requirements which are developed by the Department or other  
regulatory agency that has animal health jurisdiction, with  
factors such as the need for antemortem and postmortem  
licensed veterinarian or veterinarian's designee.

(C) *Field-dressed wild game animals.* Field-dressed wild game animals may not be received for sale or service unless under a routine inspection program that ensures that the following occur:

veterinarian  
requirements  
poultry  
animal

(1) The animals receive a postmortem examination by a licensed  
or veterinarian's designee.

(2) The animals are field-dressed and transported according to  
specified by the Department or other regulatory agency that has animal  
health jurisdiction.

(3) The animals are processed according to laws governing meat and  
as determined by the Department or other regulatory agency that has  
health jurisdiction.

(D) *Endangered or threatened wildlife.* A game animal may not be received for sale or service if it is a species of wildlife that is listed in 50 CFR 17 (relating to endangered and threatened wildlife and plants).

## Cross References



This section cited in 7 Pa. Code § 46.3 (relating to definitions); 7 Pa. Code § 46.361 (relating to cooking raw animal-derived foods); and 7 Pa. Code § 46.441 (relating to discarding or reconditioning unsafe, adulterated or contaminated food).

**§10-1202.22 Ice.**

Ice for use as a food or a cooling medium shall be made from drinking water.

**SPECIFICATIONS FOR RECEIVING, ORIGINAL CONTAINERS AND RECORDS**

**§10-1202.41 Receiving temperature of food.**

(A) *Refrigerated potentially hazardous food.* Except as specified in §§ 10-1202.43(B) and 10-02.44(B) (relating to receiving shell eggs; and receiving eggs and milk products), refrigerated potentially hazardous food shall be at an internal temperature of 5°C (41°F) or below when received.

(B) *Cooked potentially hazardous food.* Potentially hazardous food that is cooked to a temperature and for a time specified in §§ 10-1203.61—10-1203.63 (relating to cooking raw animal-derived foods; microwave cooking; and plant food cooking for hot holding) and received hot shall be at an internal temperature of 58°C (135°F) or above.

(C) *Frozen food.* A food that is labeled frozen and shipped frozen by a food establishment shall be received frozen.

(D) *Visible evidence of improper temperature.* Upon receipt, potentially hazardous food shall be free of evidence of previous temperature abuse. This evidence might include dehydration, ice crystals, discoloration or damaged packaging.

**§10-1202.42 Additives.**

Food may not contain unapproved food additives or additives that exceed amounts specified in 21 CFR Part 170—Part 180 (relating to food additives), generally recognized as safe or prior-sanctioned substances that exceed amounts specified in 21 CFR Parts 181—186, substances that exceed amounts specified in 9 CFR 424.21 (relating to use of food ingredients and sources of radiation), or pesticide residues that exceed provisions specified in 40 CFR Part 180 (relating to tolerances and exemptions from tolerances for pesticide chemicals).

**Cross References**

This section cited in 7 Pa. Code § 46.284 (relating to protection from unapproved additives).

#### **§10-1202.43 Receiving shell eggs.**

(A) *General.* Shell eggs shall be received clean and sound and may not exceed the restricted egg tolerances for PA Consumer Grade B as specified in § 87.41 (relating to standards).

(B) *Temperature.* Shell eggs shall be received by a food facility in refrigerated equipment that maintains an ambient temperature of 7°C (45°F) or less, or as otherwise specified in section 3 of the Egg Refrigeration Law (31 P. S. § 300.3).

(C) *Labeling.* Shell eggs received by a food facility shall be labeled as specified in §§ 87.51 and 87.52 (relating to receptacles; and marketing) and include safe handling instructions as specified in 21 CFR 101.17(h) (relating to food labeling warning, notice, and safe handling statements).

(D) *Repackaging.* Cartons of shell eggs not in sound condition, such as those containing cracked eggs, leaking eggs or frozen eggs, shall be removed from retail sale. The food facility may not rework, repack or transfer shell eggs from their original cartons or containers. Shell eggs may be sold as an incomplete dozen or container provided that the quantity labeling on the carton or container is changed to reflect the actual number of shell eggs within.

#### **Cross References**

This section cited in 7 Pa. Code § 46.241 (relating to receiving temperature of food).

#### **§10-1202.44 Receiving eggs and milk products.**

(A) *Liquid, frozen and dry eggs and egg products.* Liquid, frozen and dry eggs and egg products shall be obtained pasteurized.

(B) *Milk and milk products.* Milk and milk products shall be obtained pasteurized and received at a temperature of 7°C (45°F) or less, or as otherwise permitted under the Milk Sanitation Law.

(C) *Frozen milk products.* Frozen milk products shall be obtained pasteurized or as otherwise permitted under the Milk Sanitation Law.

(D) *Cheese.* Cheese shall be obtained pasteurized unless alternative procedures to pasteurization are specified and published in the CFR. An example of acceptable alternative standards for curing certain cheese varieties is in 21 CFR 133 (relating to cheeses and related cheese products).

#### **Cross References**

This section cited in 7 Pa. Code § 46.241 (relating to receiving temperature of food).

**§10-1202.45 Package integrity of food upon receipt.**

Food packages shall be in good condition and protect the integrity of the contents so that the food is not exposed to adulteration or potential contaminants.

**§10-1202.46 Receiving shucked shellfish: packaging and identification.**

(A) *Label requirement.* Raw shucked shellfish shall be obtained in nonreturnable packages which bear a legible label that identifies the following:

- (1) The name, address and certification number of the shucker-packer or repacker of the molluscan shellfish.
- (2) For packages with a capacity of less than 1.87 L (1/2 gallon): the “sell by” or “best if used by” date.
- (3) For packages with a capacity of 1.87 L (1/2 gallon) or more: the date shucked.

(B) *No label or inadequate label.* A package of raw shucked shellfish that does not bear a label or which bears a label which does not contain all the information as specified in subsection (a) shall be subject to a detention, in accordance with section 6 of the Food Act (31 P. S. § 20.6).

**Cross References**

This section cited in 7 Pa. Code § 46.249 (relating to molluscan shellfish: original container).

**§10-1202.47 Shellstock identification.**

(A) *Harvester’s and dealer’s source identification tags or labels.* Shellstock shall be obtained in containers bearing legible source identification tags or labels that are affixed by the harvester and each dealer that depurates, ships or reships the shellstock, as specified in the National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish.

(1) *Contents of harvester’s tag or label.* A harvester’s tag or label shall list the following information, in the following order:

- (i) The harvester’s identification number as described in the

National

Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish, and that is assigned by the Department or other authority having jurisdiction.

shellfish control

(ii) The date of harvesting.

aquaculture

designations

having

or

(iii) The most precise identification of the harvest location or site that is practicable based on the system of harvest area

that is in use by the Department or other shellfish control authority

jurisdiction, and including the abbreviation of the name of the state country in which the shellfish are harvested.

(iv) The type and quantity of shellfish.

(v) The following statement in bold, capitalized type:

**THIS TAG IS REQUIRED TO BE ATTACHED UNTIL  
CONTAINER IS EMPTY OR RETAGGED AND THEREAFTER  
KEPT ON FILE FOR 90 DAYS.**

(2) *Contents of dealer's tag or label.* A dealer's tag or label shall list the following information, in the following order:

having

abbreviation

harvested.

(i) The dealer's name and address, and the certification number assigned by the Department or other shellfish control authority jurisdiction.

(ii) The original shipper's certification number including the of the name of the state or country in which the shellfish are

(iii) The same information as specified for a harvester's tag under paragraph (1)(ii)—(iv).

(iv) The following statement in bold, capitalized type:

**THIS TAG IS REQUIRED TO BE ATTACHED UNTIL  
CONTAINER IS EMPTY AND THEREAFTER KEPT  
ON FILE FOR 90 DAYS.**

(B) *Missing or incomplete tag or label.* A container of shellstock that does not

bear a tag or label or that bears a tag or label that does not contain all the information as specified in subsection (A) shall be subject to a detention, in accordance with section 6 of the Food Act (31 P. S. § 20.6).

(C) *Harvester's tag or label shall include dealer information.* If a place is provided on the harvester's tag or label for a dealer's name, address and certification number, the dealer's information shall be listed first, notwithstanding subsection (A)(1).

(D) *Exception to requirement of separate dealer's tag or label.* If the harvester's tag or label is designed to accommodate each dealer's identification as specified in subsection (a)(2)(i) and (ii), individual dealer tags or labels need not be provided.

### **Cross References**

This section cited in 7 Pa. Code § 46.249 (relating to molluscan shellfish: original container).

### **§10-1202.48. Shellstock: condition upon receipt.**

Shellstock shall be reasonably free of mud, dead shellfish and shellfish with broken shells when received by a food facility. Dead shellfish or shellstock with badly broken shells shall be discarded.

### **§10-1202.49 Molluscan shellfish: original container.**

(A) *General requirement.* Molluscan shellfish may not be removed from the container in which they are received other than immediately before sale or preparation for service. The two exceptions to this requirement are set forth in subsections (1) and (2).

(1) *Exception: shellstock.* Shellstock may be removed from the container in which they are received, displayed on drained ice or held in a display container, and a quantity specified by a consumer may be removed from the display or display container and provided to the consumer if both of the following occur:

(a) The source of the shellstock on display is identified as specified in § 10-1202.47 (relating to shellstock identification) and recorded as specified in § 10-1202.50 (relating to shellstock: maintaining identification)

(b) The shellstock are protected from contamination.

the  
which  
the  
which  
individual servings are dispensed upon a consumer's request if both of the following apply:

in  
and  
dates during  
(a) The labeling information for the shellfish on display as specified  
§ 10-1202.46 (relating to receiving shucked shellfish: packaging  
identification) is retained and correlated to the date when, or  
which, the shellfish are sold or served.

(b) The shellfish are protected from contamination.

(B) *Hand contact with food that is not ready-to-eat food.* Food employees shall minimize bare hand and arm contact with exposed food that is not in a ready-to-eat form.

(C) *Approval of bare-hand contact.* Food employees may contact ready-to-eat foods with their bare hands if the food facility operator submits a written plan to the Department and the Department provides the food facility operator written approval of the plan. The written plan and related documentation, and the Department's written approval shall be available at the food facility for use by the person in charge and review by the Department upon request. The written plan shall contain the following:

- barehand  
contacted
- (1) The reason the person-in-charge of the food facility is unable to comply with subsection (B).
  - (2) A provision identifying the public health hazards associated with contact specific to the food facility, demonstrating that these hazards are understood by the food facility operator.
  - (3) Verification that the food facility has implemented and is in compliance with all applicable supervision, employee health, personal cleanliness and hygienic practices provisions required under 10-1201.01 et seq (relating to management and personnel).
  - (4) A provision identifying exposed ready-to-eat foods that will be

work station with bare hands and the procedures and practices which are in place to assure that food employees wash their hands before returning to their and that cross-contamination from touching raw foods and ready-to-eat foods is precluded.

(5) An effective training plan for food employees.

this (i) The plan shall emphasize the following subjects addressed in chapter:

(a) Not working when ill.

(b) Good hygienic practices and personal cleanliness.

(c) Proper handwashing procedures.

(d) Safe food preparation procedures.

for (ii) The training plan shall acknowledge management responsibility training, specify the program content and training frequency (including refresher training).

implemented, (6) Documentation demonstrating that paragraph (5)(i) and (ii) are and are verified by management.

with. (7) An action plan identifying corrective actions to be taken in situations in which the practices and procedures in the written plan are not complied with.

### **Cross References**

This section cited in 7 Pa. Code § 46.102 (relating to duties of the person in charge).

### **§ 10-1202.62 Preventing contamination when tasting.**

A food employee may not use a utensil more than once to taste food that is to be sold or served.

## **PREVENTING FOOD AND INGREDIENT CONTAMINATION**

**§10-1202.81 Preventing contamination of packaged and unpackaged food: separation, packaging and segregation.**

(A) *Required protective measures.* Food shall be protected from cross contamination by the following procedures, as applicable:

holding (1) Separating raw animal-derived foods during storage, preparation, and display from:

eat (i) Raw ready-to-eat food including other raw animal-derived food such as fish for sushi or molluscan shellfish, or other raw ready-to-eat food such as vegetables.

(ii) Cooked ready-to-eat food.

as ingredients, (2) Separating types of raw animal-derived foods (such as beef, fish, lamb, pork and poultry) from each other during storage, preparation, holding and display, except when these raw animal-derived foods are combined by doing the following:

of (i) Using separate equipment for each type or arranging each type food in equipment so that cross contamination of one type with another is prevented.

areas. (ii) Preparing each type of food at different times or in separate

(relating (3) Cleaning equipment and utensils as specified in § 10-1207.12(A) to frequency of cleaning equipment food-contact surfaces and utensils) and sanitizing as specified in § 10-1207.31(C) (relating to sanitization: requirement, frequency and methods).

(4) Storing the food in packages, covered containers or wrappings. The exception to this requirement is in subsection (B).

(5) Cleaning hermetically sealed containers of food of visible soil before opening.

case (6) Protecting food containers that are received packaged together in a or overwrap from cuts when the case or overwrap is opened.



(7) Storing damaged, spoiled or recalled food being held in the food facility as specified in § 10-1209.64 (relating to distressed merchandise: segregated).

(8) Separating fruits and vegetables from ready-to-eat food before the fruits and vegetables are washed as specified in § 10-1202.85 (relating to washing raw fruits and vegetables).

(B) *Exception to the requirement of storing foods in packages, covered containers*

*or wrappings.* Subsection (A)(4) does not apply to the following:

(1) Whole, uncut, raw fruits and vegetables and nuts in the shell that require peeling or hulling before consumption.

(2) Primal cuts, quarters or sides of raw meat or slab bacon that are hung on clean, sanitized hooks or placed on clean, sanitized racks.

(3) Whole, uncut, processed meats such as country hams and smoked or cured sausages that are placed on clean, sanitized racks.

(4) Food being cooled as specified in § 10-384(D)(2) (relating to potentially hazardous food: cooling).

(5) Shellstock.

#### **§ 10-1202.82 Identification of content on food storage containers.**

Working containers holding food or food ingredients (such as cooking oils, flour, herbs, potato flakes, salt, spices and sugar) that are removed from their original packages for use in the food facility shall be identified with the common name of the food they contain. However, containers holding food that can be readily and unmistakably recognized (such as dry pasta) need not be identified.

#### **§10-1202.83 Substituting pasteurized eggs for raw shell eggs in certain recipes.**

Pasteurized eggs or egg products shall be substituted for raw shell eggs in the preparation of foods such as Caesar salad, hollandaise or be'arnaise sauce, mayonnaise, eggnog, ice cream and egg-fortified beverages that are not either of the following:

(1) Cooked as specified in § 10-1203.61(A)(1) or (2) (relating to cooking raw animal-derived foods).

(2) Included in § 10-1203.61(D).

#### **§10-1202.84 Protection from unapproved additives.**

(A) *Unapproved additives or unsafe levels of approved additives.* Food or food ingredients shall be protected from contamination that may result from the addition of unsafe or unapproved food or color additives, and from unsafe or unapproved levels of approved food and color additives, as described in § 10-1202.42 (relating to additives).

(B) *Sulfiting agents.* A food employee may not do the following:

- that
- (1) Apply sulfiting agents to fresh fruits and vegetables intended for raw consumption or to a food considered to be a good source of vitamin B1, as term is defined in 21 CFR 101.54(c) (relating to nutrient content claims for “good source,” “high,” “more,” and “high potency”).
  - (2) Serve or sell a food specified in paragraph (1), other than grapes, that is treated with sulfiting agents before receipt by the food facility.

#### **§10-1202.85 Washing raw fruits and vegetables.**

(A) *General.* Raw fruits and vegetables shall be thoroughly washed in water to remove soil and other contaminants before being cut, combined with other ingredients, cooked, served or offered for human consumption in ready-to-eat form.

(B) *Exception.* Whole, raw fruits and vegetables which are intended for washing by the consumer before consumption need not be washed before they are sold.

(C) *Chemical washing.* Fruits and vegetables may be washed by using chemicals as specified in § 10-1210.24(B) (relating to chemicals: use criteria).

#### **Cross References**

This section cited in 7 Pa. Code § 46.3 (relating to definitions); 7 Pa. Code § 46.261 (relating to preventing contamination from food employees’ hands); and 7 Pa. Code § 46.281 (relating to preventing contamination of packaged and unpackaged food: separation, packaging and unpackaging segregation).

#### **§10-1202.86 Preventing contamination from ice used as a coolant.**

(A) *Ice used as exterior coolant is prohibited as ingredient.* Ice may not be used as food after it has been used as a medium for cooling the exterior surfaces

of food such as melons or fish, packaged foods such as canned beverages or cooling coils and tubes of equipment.

(B) *Storage or display of food in contact with water or ice.*

with  
nature of  
(1) *Packaged food.* Packaged food may not be stored in direct contact  
ice or water if the food is subject to the entry of water because of the  
its packaging, wrapping or container or its positioning in the ice or water.

(2) *General prohibition.* Unpackaged foods other than those described in  
paragraphs (3) and (4) may not be stored in direct contact with undrained  
ice.

may be  
(3) *Certain raw fruits and vegetables.* Whole, raw fruits or vegetables; cut,  
raw vegetables such as celery or carrot sticks or cut potatoes; and tofu  
immersed in ice or water.

in  
(4) *Raw chicken and raw fish.* Raw chicken and raw fish that are received  
immersed in ice in shipping containers may remain in that condition while  
storage awaiting preparation, display, service or sale.

## **PREVENTING CONTAMINATION FROM EQUIPMENT, UTENSILS AND LINENS**

### **§10-1203.01 Preventing contamination from food contact with equipment and utensils.**

Food shall only contact surfaces of equipment and utensils that are cleaned as  
specified in §§ 10-1207.11—10-1207.19 (relating to cleaning of equipment and utensils)  
and sanitized as specified in § 10-1207.31 (relating to sanitization: requirement,  
frequency  
and methods).

### **§ 10-1203.02 In-use utensils and between-use storage.**

(A) *General.* During pauses in food preparation or dispensing, food preparation  
and dispensing utensils shall be stored in the food with their handles above  
the top of the food and the container, unless the food is non-potentially  
hazardous  
and within containers or equipment that can be closed, such as bins of sugar,  
flour or cinnamon—in which case the food preparation and dispensing utensils  
shall be stored with their handles above the top of the food within the containers.

(B) *Storage on cleaned and sanitized tables or equipment.* During pauses in food preparation or dispensing, food preparation and dispensing utensils may be stored on a clean portion of the food preparation table or cooking equipment only if the in-use utensil and the table or equipment are cleaned and sanitized at a frequency specified in §§ 10-1207.12 and 10-1207.31 (relating to frequency of cleaning equipment food-contact surfaces and utensils; and sanitization: requirement, frequency and methods).

(C) *Storage in running water.* During pauses in food preparation or dispensing, food preparation and dispensing utensils may be stored in running water of sufficient velocity to flush particulates to the drain, if used with moist food such as ice cream or mashed potatoes.

(D) *Storage in clean, protected locations.* During pauses in food preparation or dispensing, food preparation and dispensing utensils may be stored in a clean, protected location if the utensils, such as scoops, are used only with a food that is not potentially hazardous.

(E) *Storage in a container of water.* During pauses in food preparation or dispensing, food preparation and dispensing utensils may be stored in a container of water if the water is maintained at a temperature of at least 58°C (135°F) and the container is cleaned at frequency specified in § 10-120712(D)(7).

### **§ 10-1203.03 Linens and napkins: use limitations.**

Linens and napkins may not be used in contact with food unless they are used for either of the following purposes:

- (1) To line a container for the service of foods, where the linens and napkins are replaced each time the container is refilled for a new consumer.
- (2) For retail display of nonpotentially hazardous food, where the linens and napkins are replaced with each restocking of the retail display.

### **Cross References**

This section cited in 7 Pa. Code § 46.751 (relating to requirement and frequency of laundering).

### **§10-1203.04 Wiping cloths: use limitations.**

(A) *Cloths used for wiping food spills.* Cloths that are used for wiping food spills shall be used for no other purpose.

(B) *Wet and dry wiping cloths.* Cloths used for wiping food spills shall be one of the following:

(1) Dry and used for wiping food spills from tableware and carry-out containers.

(2) Wet and cleaned as specified in § 10-1207.51(B)(4) (relating to requirement and frequency of laundering), stored in a chemical sanitizer at a concentration specified in § 10-1206.74(A) (relating to warewashing equipment: mechanical or manual), and used for wiping spills from food-contact and nonfood-contact surfaces of equipment.

(C) *Wiping cloths used with raw animal-derived foods.* Dry or wet cloths that are used with raw animal-derived foods shall be kept separate from cloths used for other purposes, and wet cloths used with raw animal-derived foods shall be kept in a separate sanitizing solution.

(D) *General cleanliness.* Wet wiping cloths used with a freshly made sanitizing solution and dry wiping cloths shall be free of food debris and visible soil.

#### **§10-1203.05 Gloves: use limitations.**

(A) *Single-use gloves.* Single-use gloves shall be used for only one task (such as working with ready-to-eat food or with raw animal-derived food), used for no other purpose and discarded when damaged or soiled, or when interruptions occur in the operation.

(B) *Slash-resistant gloves: general.* Except as specified in subsection (c), slash-resistant gloves that are used to protect the hands during operations requiring cutting shall be used in direct contact only with food that is subsequently cooked as specified in §§ 10-1203.61—10-1203.66 (relating to destruction of organisms of public health concern), such as frozen food or a primal cut of meat.

(C) *Slash-resistant gloves: exception.* Slash-resistant gloves may be used with ready-to-eat food that will not be subsequently cooked if the slash-resistant gloves have a smooth, durable and nonabsorbent outer surface; or if the slash-resistant gloves are covered with a smooth, durable, nonabsorbent glove or a single-use glove.

(D) *Cloth gloves.* Cloth gloves may not be used in direct contact with food unless the food is subsequently cooked as required in §§ 10-1203.61—10-1203.66, such as frozen food or a primal cut of meat.

### **Cross References**

This section cited in 7 Pa. Code § 46.751 (relating to requirement and frequency of laundering).

### **§10-1203.06 Using clean tableware for second portions and refills.**

(A) *General.* A food employee may not use tableware, including single-service articles, soiled by the consumer, to provide second portions or refills. However, a food employee may refill a consumer's drinking cup or container without contact between the pouring utensil and the lip-contact area of the drinking cup or container.

(B) *Use of soiled tableware by self-service consumers to obtain food from display or serving equipment prohibited.* Self-service consumers may not be allowed to use soiled tableware (including single-service articles) to obtain additional food from the display and serving equipment. The sole exception to this prohibition is described in subsection (C).

(C) *Use of soiled drinking cups by self-service consumers to obtain drinks.* Drinking cups and containers may be reused by self-service consumers if refilling is a contamination-free process as specified in § 10-1205.83(1), (2) and (4) (relating to dispensing equipment: protection of equipment and food).

### **Cross References**

This section cited in 7 Pa. Code § 46.102 (relating to duties of the person in charge).

### **§10-1203.07 Refilling returnables.**

(A) *Refilling with potentially hazardous food prohibited.* A take-home food container returned to a food facility may not be refilled at a food facility with a potentially hazardous food.

(B) *Refilling with a cleaned container.* Except as specified in subsection (c), a take-home food container refilled with food that is not potentially hazardous shall be cleaned as specified in § 10-1207.19(B) (relating to washing returnable containers for refilling).

(C) *Refilling certain containers by a contamination-free process.* Personal take-out beverage containers, such as thermally insulated bottles, nonspill coffee cups and promotional beverage glasses, may be refilled by employees or the consumer if refilling is a contamination-free process as specified in § 10-1205.83(1)—(3) (relating to dispensing equipment: protection of equipment and food).

### **Cross References**

This section cited in 7 Pa. Code § 46.719 (relating to washing returnable containers for refilling).

## **PREVENTING CONTAMINATION FROM THE PREMISES**

### **§10-1203.21 Food storage.**

(A) *General storage requirements.* Except as specified in subsections (B) and (C), food shall be protected from contamination by storing as follows:

- (1) In a clean, dry location.
- (2) Where it is not exposed to splash, dust or other contamination.
- (3) At least 15 cm (6 inches) above the floor.

(B) *Exception for food stored on case lot handling equipment.* Food in packages and working containers may be stored less than 15 cm (6 inches) above the floor on case lot handling equipment as specified in § 10-1205.95 (relating to case lot handling equipment: moveability).

(C) *Exception for particular food containers.* Pressurized beverage containers, cased food in waterproof containers such as bottles or cans, and milk containers in plastic crates may be stored on a floor that is clean and not exposed to floor moisture.

(D) *Foods storage: prohibited areas.* Food may not be stored in any of the following locations:

- (1) A locker room.
- (2) A toilet room.
- (3) A dressing room.
- (4) A garbage room.

(5) A mechanical room.

(6) Under a sewer line that is not shielded to intercept potential drips.

(7) Under a leaking water line (including a leaking automatic fire sprinkler head), or under a line on which water has condensed.

(8) Under an open stairwell.

(9) Under any other source of contamination, such as peeling paint, unprotected light bulbs, some ventilation units or outside sheds.

### **Cross References**

This section cited in 7 Pa. Code § 46.384 (relating to potentially hazardous food: cooling).

### **§10-1203.22 Vended potentially hazardous food: original container.**

Potentially hazardous food dispensed through a vending machine shall be in the package in which it was placed at the food facility at which it was prepared.

### **§10-1203.23 Food preparation.**

During preparation, unpackaged food shall be protected from environmental sources of contamination, such as outside dust, construction or renovation debris, or ventilation dust.

## **PREVENTING CONTAMINATION BY CONSUMERS**

### **§ 10-1203.41 Food display.**

Except for nuts in the shell and whole, raw fruits and vegetables that are intended for hulling, peeling or washing by the consumer before consumption, food on display shall be protected from contamination by the use of packaging; counter, service line or salad bar food guards; display cases; or other effective means.

### **§10-1203.42 Protection of condiments.**

(A) *General.* Condiments shall be protected from contamination by being kept in dispensers that are designed to provide protection, protected food displays provided with the proper utensils, original containers designed for dispensing, or individual packages or portions.

(B) *Condiments at a vending machine location.* Condiments at a vending machine location shall be in individual packages or provided in dispensers that are filled at an approved location, such as the food facility that provides food to



the vending machine location or a properly equipped food facility that is located on the site of the vending machine location.

#### **§10-1203.43 Consumer self-service operations.**

(A) *Raw, unpackaged animal-derived foods.* Raw, unpackaged animal-derived food (such as beef, lamb, pork, poultry and fish) may not be offered for consumer self-service. This subsection does not apply to consumer self-service of ready-toeat foods at buffets or salad bars that serve foods such as sushi or raw shellfish; ready-to-cook individual portions for immediate cooking and consumption on the premises such as consumer-cooked meats or consumer-selected ingredients for Mongolian barbecue; or raw, frozen, shell-on shrimp or lobster.

(B) *Ready-to-eat foods.* Consumer self-service operations for ready-to-eat foods shall be provided with suitable utensils or effective dispensing methods that protect the food from contamination.

(C) *Monitoring by food employees.* Consumer self-service operations such as buffets and salad bars shall be monitored by food employees trained in safe operating procedures.

#### **§10-1203.44 Returned food and reservice of food.**

(A) *General prohibition of reuse of returned or unused food.* Except as specified in subsection (B), after being served or sold and in the possession of a consumer, food that is unused or returned by the consumer may not be offered as food for human consumption.

(B) *Exception for certain foods and packages.* A container of food that is not potentially hazardous may be transferred from one consumer to another if either of the following occurs:

(1) The food is dispensed so that it is protected from contamination and the container is closed between uses, such as a narrow-neck bottle containing catsup, steak sauce or wine.

(2) The food, such as crackers, salt or pepper, is in an unopened original package and is maintained in sound condition.

#### **DESTRUCTION OF ORGANISMS OF PUBLIC HEALTH CONCERN**

**§ 10-1203.61Cooking raw animal-derived foods.**

(A) *General cooking requirement.* Except as specified in subsections (b)—(d), raw animal-derived foods (such as eggs, fish, meat, poultry and foods containing these raw animal-derived foods) shall be cooked to heat all parts of the food to a temperature and for a time that complies with one of the following methods, based on the food that is being cooked:

(1) 63°C (145°F) or above for 15 seconds for either of the following:

(i) Raw shell eggs that are broken and prepared in response to a consumer's order and for immediate service.

(b),  
for food  
animals).  
(ii) Except as specified in paragraphs (2) and (3), and subsection  
fish, meat and pork, including game animals commercially raised  
as specified in § 10-1202.21(A) (relating to game

following  
the  
broken  
service:  
(2) 68°C (155°F) for 15 seconds or the temperature specified in the  
chart that corresponds to the holding time for ratites and injected meats;  
following if they are comminuted: fish, meat, game animals commercially  
raised for food as specified in § 46.221(a); and raw eggs that are not  
and prepared in response to a consumer's order and for immediate

Minimum Temperature	Minimum Time
63 [deg] C (145 [deg] F)	3 minutes
66 [deg] C (150 [deg] F)	1 minute
70 [deg] C (158 [deg] F)	Less than 1 second (instantaneous)

pasta,  
(3) 74°C (165°F) or above for 15 seconds for poultry, wild game animals  
as specified in § 46.221(b) and (c), stuffed fish, stuffed meat, stuffed  
stuffed poultry, stuffed ratites or stuffing containing fish, meat, poultry or  
ratites.

(B) *Certain roasts.* Whole beef roasts, corned beef roasts, pork roasts and cured pork roasts such as ham, shall be cooked as follows:

(1) In an oven that is preheated to the temperature specified for the roast's weight in the following chart and that is held at that temperature:

Oven Type	Oven Temperature for Roast Weighing less than 4.5 kg (10 lbs.)	Oven Temperature for Roast Weighing 4.5 kg (10 lbs.) or more
Still Dry	177 [deg] C (350 [deg] F) or more	121 [deg] C (250 [deg] F) or more
Convection	163 [deg] C (325 [deg] F) or more	121 [deg] C (250 [deg] F) or more
High Humidity Cooking	121 [deg] C (250 [deg] F) or more	121 [deg] C (250 [deg] F) or more

(2) As specified in the following chart, to heat all parts of the food to a temperature and for the holding time (including postoven heat rise) that corresponds to that temperature:

Minimum Temperature	Minimum Time
54.4 [deg] C (130 [deg] F)	112 minutes
55.0 [deg] C (131 [deg] F)	89 minutes
56.1 [deg] C (133 [deg] F)	56 minutes
57.2 [deg] C (135 [deg] F)	36 minutes
58.9 [deg] C (138 [deg] F)	28 minutes
60.0 [deg] C (140 [deg] F)	12 minutes
61.1 [deg] C (142 [deg] F)	8 minutes
62.2 [deg] C (144 [deg] F)	5 minutes
62.8 [deg] C (145 [deg] F)	4 minutes
63.9 [deg] C (147 [deg] F)	134 seconds
65.0 [deg] C (149 [deg] F)	85 seconds
66.1 [deg] C (151 [deg] F)	54 seconds
67.2 [deg] C (153 [deg] F)	34 seconds
68.3 [deg] C (155 [deg] F)	22 seconds
69.4 [deg] C (157 [deg] F)	14 seconds
70.0 [deg] C (158 [deg] F)	< 1 Second

(C) *Raw or undercooked whole-muscle, intact beef steak.* A raw or undercooked whole-muscle, intact beef steak may not be served or offered for sale in a ready-to-eat form unless all of the following apply:

(1) The food facility serves a population that is not a highly susceptible population.

(2) The steak is labeled to indicate that it meets the definition of “wholemuscle, intact beef” as specified in § 10-1202.14 (relating to whole-muscle, intact beef).

temperature (3) The steak is cooked on both the top and bottom to a surface of 63°C (145°F) or above and a cooked color change is achieved on all external surfaces.

undercooked (D) *Other raw animal-derived foods.* A raw animal-derived food such as raw egg, raw fish, raw-marinated fish, raw molluscan shellfish, or steak tartare; or a partially cooked food such as lightly cooked fish, soft cooked eggs, or meat other than whole-muscle, intact beef steaks as specified in subsection (C), shall be served or offered for sale in a ready-to-eat form only if either of the following occurs:

(relating to (1) The food facility serves a population that is not a highly susceptible population, and the consumer is informed as specified in § 46.423 raw, consumer advisory required with respect to animal-derived foods that are undercooked or not otherwise processed to eliminate pathogens) that to ensure its safety, the food should be cooked as specified in subsections (a) or (b).

specified (2) The Department grants a variance from subsection (A) or (B) as is in § 10-1211.03(A) (relating to variances), based on an HACCP plan that all of the following:

(i) Submitted by the license holder and approved as specified in § 10-1211.03(B). lesser (ii) Documents scientific data or other information showing that a time and temperature regimen results in a safe food. and (iii) Verifies that equipment and procedures for food preparation training of food employees at the food facility meet the conditions of the variance.

### **Cross References**

This section cited in 7 Pa. Code § 46.3 (relating to definitions); 7 Pa. Code § 46.214 (relating to whole-muscle, intact beef); 7 Pa. Code § 46.218 (relating to fish); 7 Pa. Code § 46.241 (relating to receiving temperature of food); 7 Pa. Code § 46.283 (relating to substituting

pasteurized eggs for raw shell eggs in certain recipes); 7 Pa. Code § 46.305 (relating to gloves: use limitations); 7 Pa. Code § 46.365 (relating to reheating food); 7 Pa. Code § 46.383 (relating to potentially hazardous food: thawing); 7 Pa. Code § 46.385 (relating to potentially hazardous food: hot and cold holding); 7 Pa. Code § 46.423 (relating to consumer advisory required with respect to animal-derived foods that are raw, undercooked or not otherwise processed to eliminate pathogens); 7 Pa. Code § 46.461 (relating to additional safeguards for a food facility that serves a highly susceptible population); 7 Pa. Code § 46.712 (relating to frequency of cleaning equipment food-contact surfaces and utensils); and 7 Pa. Code § 46.1122 (relating to HACCP plans).

#### **§10-1203.62 Microwave cooking.**

Raw animal-derived foods cooked in a microwave oven shall meet all of the following conditions:

- (1) Rotated or stirred throughout or midway during cooking to compensate for uneven distribution of heat.
- (2) Covered to retain surface moisture.
- (3) Heated to a temperature of at least 74°C (165°F) in all parts of the food.
- (4) Allowed to stand covered for 2 minutes after cooking to obtain temperature equilibrium.

#### **Cross References**

This section cited in 7 Pa. Code § 46.3 (relating to definitions); 7 Pa. Code § 46.241 (relating to receiving temperature of food); 7 Pa. Code § 46.305 (relating to gloves: use limitations); 7 Pa. Code § 46.365 (relating to reheating food); and 7 Pa. Code § 46.383 (relating to potentially hazardous food: thawing).

#### **§10-1203.63 Plant food cooking for hot holding.**

Fruits and vegetables that are cooked for hot holding shall be cooked to a temperature of 58°C (135°F).

#### **Cross References**

This section cited in 7 Pa. Code § 46.3 (relating to definitions); 7 Pa. Code § 46.241 (relating to receiving temperature of food); and 7 Pa. Code § 46.305 (relating to gloves: use limitations).

#### **§10-1203.64 Parasite destruction in fish other than molluscan shellfish by freezing.**

- (A) *General temperature requirement.* Except as specified in subsection (b),

before service or sale in ready-to-eat form, raw, raw-marinated, partially cooked or marinated-partially cooked fish other than molluscan shellfish shall be frozen throughout to a temperature of one of the following:

(1) -20°C (-4°F) or below for 168 hours (7 days) in a freezer.

(2) -35°C (-31°F) or below for 15 hours in a blast freezer.

(B) *Exception for certain tuna species.* If the fish are tuna of the species *Thunnus alalunga*, *Thunnus albacares* (Yellowfin tuna), *Thunnus atlanticus*, *Thunnus maccoyii* (Bluefin tuna, Southern), *Thunnus obesus* (Bigeye tuna), or *Thunnus thynnus* (Bluefin tuna, Northern), the fish may be served or sold in a raw, raw-marinated or partially cooked ready-to-eat form without freezing as specified in subsection (A).

(C) *Records: creation and retention.*

(1) Except as specified in subsection (B) and paragraph (2), if raw, rawmarinated, partially cooked or marinated-partially cooked fish are served or sold in ready-to-eat form, the person in charge shall record the freezing temperature and time to which the fish are subjected and shall retain the records at the food facility for 90-calendar days beyond the time of service or sale of the fish.

(2) If the fish are frozen by a supplier, a written agreement or statement from the supplier stipulating that the fish supplied are frozen to a temperature and for a time specified in subsection (a) may substitute for the records specified in paragraph (1).

### **Cross References**

This section cited in 7 Pa. Code § 46.3 (relating to definitions); 7 Pa. Code § 46.218 (relating to fish); and 7 Pa. Code § 46.305 (relating to gloves: use limitations).

### **§10-1203.65 Reheating food.**

(A) *Preparation for immediate service.* Cooked and refrigerated food that is prepared for immediate service in response to an individual consumer order, such as a roast beef sandwich au jus, may be served at any temperature.

*(B) Reheating for hot holding.*

- of at  
done  
cold
- (1) Potentially hazardous food that is cooked, cooled and reheated for hot holding shall be reheated so that all parts of the food reach a temperature least 74°C (165°F) for 15 seconds. Reheating for hot holding shall be rapidly and the time the food is between the temperature specified in § 10-1203.85(A)(2) or (3) (relating to potentially hazardous food: hot and holding) and 74°C (165°F) may not exceed 2 hours. Exceptions to these requirements are specified in paragraphs (2)—(4).
- hazardous  
accordance
- (2) Except as specified in paragraph (3), reheating of potentially food in a microwave oven for hot holding shall be performed in with § 10-1203.62 (relating to microwave cooking).
- is  
jurisdiction
- (3) Ready-to-eat food taken from a commercially processed, hermetically sealed container or from an intact package from a food establishment that inspected by the Department or other food regulatory agency that has over the food processing plant shall be heated to a temperature of at least 58°C (135°F) for hot holding.
- reheated  
temperature
- (4) Remaining unsliced portions of roasts that are cooked as specified in § 10-1203.61(B) (relating to cooking raw animal-derived foods) shall be for hot holding using the oven parameters and minimum time and conditions specified in § 10-1203.61(B).

**Cross References**

This section cited in 7 Pa. Code § 46.305 (relating to gloves: use limitations); and 7 Pa. Code § 46.385 (relating to potentially hazardous food: hot and cold holding).

**§10-1203.66 Treating juice.**

Juice packaged in a food facility shall be one of the following:

- (1) Treated under an HACCP plan (as described in § 10-1211.22(B) (relating to HACCP plans)) to attain a 5-log reduction (a 99.999% reduction) of the most resistant microorganism of public health significance.

(2) If not treated to yield a 5-log reduction of the most resistant microorganism of public health concern, labeled as specified § 10-1204.22 (relating to labeling) and as specified in 21 CFR 101.17(g) (relating to food labeling warning, notice, and safe handling statements) with the following:

*Warning:* This product has not been pasteurized and, therefore, may contain harmful bacteria that can cause serious illness in children, the elderly, and persons with weakened immune systems.

### **Cross References**

This section cited in 7 Pa. Code § 46.305 (relating to gloves: use limitations).

## **TEMPERATURE AND TIME CONTROL FOR LIMITATION OF GROWTH OF ORGANISMS OF PUBLIC HEALTH CONCERN**

### **§ 10-1203.81 Stored frozen food.**

Stored frozen foods shall be maintained frozen.

### **§10-1203.82 Potentially hazardous food: slacking.**

Frozen potentially hazardous food that is slacked to moderate the temperature shall be held at one of the following:

- (1) Under refrigeration that maintains the food temperature at 5°C (41°F) or less, or at 7°C (45°F) or less as specified in § 10-1203.85(A)(3) (relating to potentially hazardous food: hot and cold holding).
- (2) At any temperature if the food remains frozen.

### **§10-1203.83 Potentially hazardous food: thawing.**

Except as specified in paragraph (4), potentially hazardous food shall be thawed by one of the procedures that follow:

- (1) Under refrigeration that maintains the food temperature at 5°C (41°F) or less, or at 7°C (45°F) or less as specified in § 10-1203.85(A)(3) (relating to potentially hazardous food: hot and cold holding).
- (2) Completely submerged under running water at a water temperature of 21°C (70°F) or below; with sufficient water velocity to agitate and float off loose particles in an overflow, for one of the following:
  - (i) A period of time that does not allow thawed portions of ready-to-eat



food to rise above 5°C (41°F), or 7°C (45°F) as specified in § 10-1203.85(A)(3).

- (B) (ii) A period of time that does not allow thawed portions of a raw animal-derived food requiring cooking as specified in § 10-1203.61(A) or (relating to cooking raw animal-derived foods) to be above 5°C (41°F), or 7°C (45°F) as specified in § 10-1203.85(A)(3) for more than 4 hours including both of the following:

(a) The time the food is exposed to the running water and the time needed for preparation for cooking.

temperature (b) The time it takes under refrigeration to lower the food to 5°C (41°F), or 7°C (45°F) as specified in § 10-1203.85(A)(3).

(3) As part of a cooking process if the food that is frozen is one of the following:

to (i) Cooked as specified in § 10-1203.61(A) or (B) or § 10-1203.62 (relating to microwave cooking).

conventional (ii) Thawed in a microwave oven and immediately transferred to cooking equipment, with no interruption in the process.

(4) Using any procedure if a portion of frozen ready-to-eat food is thawed and prepared for immediate service in response to an individual consumer's order.

#### **§10-1203.84 Potentially hazardous food: cooling.**

(A) *Cooling cooked potentially hazardous food.* Cooked potentially hazardous food shall be cooled as follows:

(1) Within 2 hours, from 58°C (135°F) to 21°C (70°F).

food: (2) Within 6 hours, from 58°C (135°F) to 5°C (41°F) or less, or to 7°C (45°F) as specified in § 10-1203.85(A)(3) (relating to potentially hazardous hot and cold holding).

(B) *Cooling potentially hazardous food prepared from ingredients at ambient temperature.* Potentially hazardous food shall be cooled within 4 hours to 5°C

from (41°F) or less, or to 7°C (45°F) as specified in § 10-1203.85(A)(3) if prepared ingredients at ambient temperature, such as reconstituted foods and canned tuna.

(C) *Cooling methods.* Cooling shall be accomplished in accordance with the time and temperature criteria specified in subsection (a) by using one or more of the following methods, based on the type of food being cooled:

- (1) Placing the food in shallow pans.
- (2) Separating the food into smaller or thinner portions.
- (3) Using rapid cooling equipment.
- (4) Stirring the food in a container placed in an ice water bath.
- (5) Using containers that facilitate heat transfer.
- (6) Adding ice as an ingredient.
- (7) Other effective methods.

(D) *Food containers in which food is cooled.* When placed in cooling or cold holding equipment, food containers in which food is being cooled shall be both of the following:

- (1) Arranged in the equipment to provide maximum heat transfer through the container walls.
- (2) Loosely covered, or uncovered if protected from overhead contamination as specified in § 10-1203.21(A)(2) (relating to food storage), during the cooling period to facilitate heat transfer from the surface of the food.

### **Cross References**

This section cited in 7 Pa. Code § 46.3 (relating to definitions); 7 Pa. Code § 46.281 (relating to preventing contamination of packaged and unpackaged food: separation, packaging and segregation); and 7 Pa. Code § 46.385 (relating to potentially hazardous food: hot and cold holding).

### **§10-1203.85 Potentially hazardous food: hot and cold holding.**

(A) *General.* Except during preparation, cooking or cooling, or when time is

used as the public health control as specified in subsection (C), potentially hazardous

food shall be maintained at one of the following temperatures, as applicable:

(1) At 58°C (135°F) or above, except that roasts cooked to a temperature and for a time specified in § 10-1203.61(B) (relating to cooking raw animal-derived foods) or reheated as specified in § 10-1203.65(B)(5) (relating to reheating food) may be held at a temperature of 54°C (130°F) or above.

(2) At 5°C (41°F) or less except as specified in paragraphs (3)—(5), or § 10-1205.84(B) (relating to vending machines).

(3) At 7°C (45°F) or between 7°C (45°F) and 5°C (41°F) in existing refrigeration equipment that is not capable of maintaining the food at 5°C (41°F) or less if either of the following is accurate:

it shall (i) The equipment is in place and in use in the food facility; and by December 13, 2008, the equipment is upgraded or replaced so that maintain food at a temperature of 5°C (41°F) or less.

a (ii) A food facility operator can demonstrate to the Department that hardship would result from meeting the requirements of this paragraph and a variance is applied for and granted by the Department. The variance will not relieve the applicant from meeting the food safety objectives of this chapter.

(4) At 7°C (45°F) or less for shell eggs, or as otherwise specified in section 3 of the Egg Refrigeration Law (31 P. S. § 300.3).

(5) At 7°C (45°F) or less for milk products, for a maximum period allowed by the “sell-by” coding required by § 59.22 (relating to milk dating), or as otherwise specified in the Milk Sanitation Law.

*(B) Date marking of ready-to-eat, potentially hazardous food.*

than (1) Except as specified in paragraph (4) or (5), refrigerated, ready-to-eat, potentially hazardous food prepared and held in a food facility for more 48 hours shall be clearly marked to indicate either of the following:

sold (i) The date by which the food shall be consumed on the premises, or discarded.

(ii) The date on which the food was prepared.

the  
paragraphs  
facility  
consumed

(2) Refrigerated ready-to-eat potentially hazardous food prepared and packaged by a food processing plant shall be clearly marked with the date original container is opened in a food facility. Except as specified in (4) and (5), all food repackaged from the original container by the food facility shall be clearly marked to indicate the date by which the food shall be consumed on the premises, sold or discarded, and in no case may this date be beyond the manufacturer's use-by date.

frequently  
be  
to the

(3) A refrigerated, ready-to-eat, potentially hazardous food that is frequently be to the Department. Department.

(4) Paragraphs (1) and (2) do not apply to individual meal portions served or repackaged for sale from a bulk container upon a consumer's request.

(5) Paragraph (2) does not apply to the following:

processing

(i) Fermented sausages produced in a Federally inspected food processing plant that are not labeled "keep refrigerated" and which retain the original casing on the product.

(ii) Shelf stable, dry fermented sausages.

(ham)  
not  
cut, the

(iii) Shelf stable salt-cured products such as prosciutto and parma produced in a Federally inspected food processing plant that are labeled "keep refrigerated"—provided that when the face is remaining portion is whole and intact.

subsequently

(6) A refrigerated, ready-to-eat, potentially hazardous food ingredient or a portion of a refrigerated, ready-to-eat, potentially hazardous food is subsequently combined with additional ingredients or portions of food, shall retain

the date marking of the earliest-prepared or first-prepared ingredient.

*(C) Time as a public health control.*

- temperature—  
food  
that is displayed or held for service for immediate consumption, all of the following shall be done:
- from  
temperature control.
- food is removed  
from temperature control.
- exceed  
a 4-hour limit shall be discarded.
- made  
with this  
hazardous  
refrigerated before  
subsection and § 10-1203.84(A)—(B) (relating to potentially food: cooling) for food that is prepared, cooked and time is used as a public health control.
- control  
for raw eggs.
- (1) Except as specified in paragraph (2), if time—rather than
- (i) The food shall be marked or otherwise identified to indicate the time that is 4 hours past the point in time when the food is removed
- (ii) The food shall be cooked and served, served if ready-to-eat, or discarded, within 4 hours from the point in time when the
- (iii) The food in unmarked containers or packages or marked to
- (iv) Written procedures shall be maintained in the food facility and available to the Department upon request, that ensure compliance
- (2) In a food facility that serves a highly susceptible population, time only—rather than temperature—may not be used as the public health

**Cross References**

This section cited in 7 Pa. Code § 46.365 (relating to reheating food); 7 Pa. Code § 46.382 (relating to potentially hazardous food: slacking); 7 Pa. Code § 46.383 (relating to potentially hazardous food: thawing); 7 Pa. Code § 46.384 (relating to potentially hazardous food: cooling); 7 Pa. Code § 46.441 (relating to discarding or reconditioning unsafe, adulterated or contaminated); 7 Pa. Code § 46.584 (relating to vending machines); and 7 Pa. Code § 46.1114 (relating to conditions of retention: responsibilities of the food facility operator).

## SPECIALIZED PROCESSING METHODS

### § 10-1204.01 Variance requirement for specialized processing methods.

A food facility shall obtain a variance from the Department as specified in § 10-1211.03(A) and (B) (relating to variances) before using any specialized processing method not currently recognized by the Department as a safe method for processing food.

### Cross References

This section cited in 7 Pa. Code § 46.402 (relating to reduced oxygen packaging); and 7 Pa. Code § 46.1122 (relating to HACCP plans).

### §10-1204.02 Reduced oxygen packaging.

(A) *General requirement.* A food facility that packages food using a reduced oxygen packaging method—where *Clostridium botulinum* is identified as a microbiological hazard in the final packaged form of the food—shall ensure that there are at least two barriers in place to control the growth and toxin formation of *Clostridium botulinum*. This requirement does not apply to a food facility that has obtained a variance under § 10-1204.01 (relating to variance requirement for specialized processing methods).

(B) *HACCP plan requirement.* A food facility that packages food using a reduced oxygen packaging method—where *Clostridium botulinum* is identified as a microbiological hazard in the final packaged form of the food—shall have an HACCP plan that contains the information specified in § 10-1211.22(B)(4) (relating to HACCP plans) and that does all of the following:

(1) Identifies the food to be packaged.

(2) Limits the food packaged to a food that does not support the growth of *Clostridium botulinum* because it complies with one of the following:

(i) Has an *aw* of 0.91 or less.

(ii) Has a pH of 4.6 or less.

(iii) Is a meat or poultry product cured at a food establishment regulated by USDA using substances specified in 9 CFR 424.21 (relating to use of food ingredients and sources of radiation), and is received in an intact package.

(iv) Is a food with a high level of competing organisms such as raw meat or raw poultry.

(3) Specifies methods for maintaining food at 5°C (41°F) or below.

(4) Describes how the packages shall be prominently and conspicuously labeled on the principal display panel in bold type on a contrasting background, with instructions to do the following:

(i) Maintain the food at 5°C (41°F) or below.

within  
premises  
(ii) For food held at refrigeration temperatures, discard the food 14 calendar days of its packaging if it is not served for on-premises consumption, or it is not consumed if served or sold for off-consumption.

by”  
(5) Limits the refrigerated shelf life to no more than 14 calendar days from packaging to consumption or the original manufacturer’s “sell by” or “use date, whichever occurs first.

(6) Includes operational procedures that do all of the following:

(i) Prohibit contacting food with bare hands.

barriers  
minimize  
limited to  
the  
(ii) Identify a designated area and the method by which physical or methods of separation of raw foods and ready-to-eat foods cross contamination, and access to the processing equipment is responsible trained personnel familiar with the potential hazards of operation.

are  
(iii) Cleaning and sanitization procedures for food-contact surfaces delineated.

responsible  
procedures  
(7) Describes the training program that ensures that the individual for the reduced oxygen packaging operation understands concepts required for a safe operation, the equipment and facilities, and the

specified in paragraph (6) and § 10-1211.22(B)(4).

(C) *Special limitation with respect to certain fish.* Except for fish that is frozen before, during and after packaging, a food facility may not package fish using a reduced oxygen packaging method.

### **Cross References**

This section cited in 7 Pa. Code § 46.1122 (relating to HACCP plans).

## **FOOD IDENTITY, PRESENTATION AND ON-PREMISES LABELING**

### **§10-1204.21 Accurate representation.**

(A) *Standards of identity.* Packaged food shall comply with standard of identity requirements in the following:

- (1) Sections 9 and 13(f) of the Food Act (31 P. S. §§ 20.9 and 20.13(f)).
- (2) Definitions in 21 CFR Parts 131—169 and 9 CFR 319 (relating to definitions and standards of identity or composition).
- (3) 21 CFR Part 130 (relating to food standards: general).
- (4) 9 CFR Part 319, Subpart A (relating to general).

(B) *Food shall be honestly presented.*

- (1) Food shall be offered for human consumption in a way that does not mislead or misinform the consumer.
- (2) Food or color additives, colored overwraps or lights may not be used to misrepresent the true appearance, color or quality of a food.

### **Cross References**

This section cited in 7 Pa. Code § 46.201 (relating to food shall be safe, unadulterated and honestly presented).

### **§10-1204.22 Labeling.**

(A) *Labels required on packaged foods.* Food packaged in a food facility shall be labeled as specified in sections 9, 10 and 13(f) of the Food Act (31 P. S. §§ 20.9, 20.10 and 20.13(f)), 21 CFR Part 101 (relating to food labeling), 9 CFR 317 (relating to labeling, marking devices, and containers) and 9 CFR part 381, Subpart N (relating to labeling and containers).

(B) *Label information on packaged foods.* Label information on packaged



foods shall include the following:

- (1) The common name of the food, or absent a common name, an adequately descriptive identity statement.
- (2) If made from two or more ingredients, a list of ingredients in descending order of predominance by weight, including a declaration of artificial color or flavor and chemical preservatives, if contained in the food.
- (3) An accurate declaration of the quantity of contents.
- (4) The name and place of business of the manufacturer, packer or distributor.
- (5) Except as exempted in section 403(q)(3)—(5) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C.A. § 343(q)(3)—(5)), nutritional labeling as specified in 21 CFR Part 101 (relating to food labeling) and 9 CFR Part 317, Subpart B (relating to nutrition labeling).
- (6) Disclosure of the use of canthaxanthin for any salmonid fish containing canthaxanthin as a color additive, by the labeling of the bulk fish container, including a list of ingredients, displayed on the retail container or by other written means, such as a counter card.

(C) *Labeling information on bulk foods available for consumer selfdispensing or on unpackaged foods portioned to consumer specifications.* Bulk food that is available for consumer self-dispensing or unpackaged foods portioned to consumer specifications shall be prominently labeled with one of the following in plain view of the consumer:

- (1) The manufacturer's or processor's label that was provided with the food.
- (2) A card, sign or other method of notification (such as a product labeling book) that includes the information specified in subsection (b)(1), (2) and (5).

(D) *Labeling information on certain bakery products.* Bakery products need not be labeled if they are sold directly to the consumer and the following are accurate:

- (1) The food is either manufactured or prepared on the premises of the

and food facility or at another food facility that is owned by the same person is regulated by the Department or other food regulatory agency that has jurisdiction.

(2) The information specified in subsection (b)(1), (2) and (5) is available at the place of sale.

(3) A health, nutrient content or other claim is not made.

(E) *Concealed or altered labeling information.* Food facility or manufacturers' dating information on foods may not be concealed or altered.

### **Cross References**

This section cited in 7 Pa. Code § 46.213 (relating to packaged food); and 7 Pa. Code § 46.366 (relating to treating juice).

### **§10-1204.23 Consumer advisory required with respect to animal-derived foods that are raw, undercooked or not otherwise processed to eliminate pathogens.**

Except as specified in §§ 10-1203.61(C) and (d)(3) and 10-1204.61 (relating to cooking raw animal-derived foods; and additional safeguards for a food facility that serves a highly susceptible population), if an animal-derived food such as beef, eggs, fish, lamb, milk, pork, poultry or shellfish that is raw, undercooked or not otherwise processed to eliminate pathogens is offered in a ready-to-eat form as a deli, menu, vended or other item; or as a raw ingredient in another ready-to-eat food, the food facility shall inform consumers by brochures, deli case or menu advisories, label statements, table tents, placards or other effective written means of the significantly increased risk associated with certain highly susceptible populations eating these foods in raw or undercooked form.

### **Cross References**

This section cited in 7 Pa. Code § 46.3 (relating to definitions); 7 Pa. Code § 46.102 (relating to duties of the person in charge); 7 Pa. Code § 46.361 (relating to cooking raw animal-derived foods); and 7 Pa. Code § 46.1121 (relating to facility and operating plans).

### **UNSAFE, ADULTERATED OR CONTAMINATED FOOD**

#### **§10-1204.41 Discarding or reconditioning unsafe, adulterated or contaminated food.**

The following foods shall be discarded:

(1) A food that is unsafe, adulterated or not honestly presented as specified in § 10-1202.01 (relating to food shall be safe, unadulterated and honestly presented),

unless the food is reconditioned according to a procedure approved by the Department.

(2) Food that is not from an approved source as specified in §§ 10-1202.11—10-1202.21.

(3) Ready-to-eat food that may have been contaminated by an employee that has been restricted or excluded as specified in § 10-1201.13 (relating to duty to impose exclusions and restrictions).

(4) Food that is contaminated by food employees, consumers or other persons through contact with their hands, bodily discharges, such as nasal or oral discharges, or other means.

(5) A food specified in § 10-1203.85(B)(1) and (2) (relating to potentially hazardous food: hot and cold holding), if any of the following occur:

more (i) The food exceeds the temperature specified in § 10-1203.85(A) for than 4 hours or for an undetermined amount of time.

(ii) The food is in a container or package that does not bear a date or day.

(6) Refrigerated, ready-to-eat, potentially hazardous food prepared in a food facility and dispensed through a vending machine with an automatic shutoff control shall be discarded if it exceeds a temperature as specified in § 10-1203.85(A).

## **SPECIAL REQUIREMENTS FOR HIGHLY SUSCEPTIBLE POPULATIONS**

**§ 10-1204.611 Additional safeguards for a food facility that serves a highly susceptible population.**

(A) *Prepackaged juice bearing a warning label prohibited.* In a food facility that serves a highly susceptible population, prepackaged juice or a prepackaged beverage containing juice that bears a warning label as specified in 21 CFR 101.17(g) (relating to food labeling warning, notice, and safe handling statements), may not be served or offered for sale.

(B) *Unpackaged juice prepared on the premises.* In a food facility that serves a highly susceptible population, unpackaged juice that is prepared on the premises

for service or sale in a ready-to-eat form shall be processed under an HACCP plan that contains the information specified in § 10-1211.22 (relating to HACCP plans) and as specified in 21 CFR 120.24 (relating to process controls).

(C) *Pasteurized eggs required in certain foods.* In a food facility that serves a highly susceptible population, pasteurized shell eggs or pasteurized liquid, frozen or dry eggs or egg products shall be substituted for raw shell eggs in the preparation of the following:

(1) Foods such as Caesar salad, hollandaise or Be'arnaise sauce, mayonnaise, egg nog, ice cream and egg-fortified beverages.

(2) Except as specified in subsection (e), recipes in which more than one egg is broken and the eggs are combined.

(D) *Prohibited ready-to-eat foods.* In a food facility that serves a highly susceptible population, the following foods may not be served or offered for sale in a ready-to-eat form:

(1) Raw animal-derived foods such as raw fish, raw-marinated fish, raw molluscan shellfish and steak tartare.

(2) A partially cooked animal-derived food such as lightly cooked fish, rare meat, soft-cooked eggs that are made from raw shell eggs and meringue.

(3) Raw seed sprouts.

(E) *Limited exception allowing use of raw eggs.* In a food facility that serves a highly susceptible population, subsection (C)(2) does not apply in any of the following circumstances:

(1) The raw eggs are combined immediately before cooking for one consumer's serving at a single meal, cooked as specified in § 10-1203.61(A)(1) (relating to cooking raw animal-derived foods), and served immediately, such as an omelet, souffle' or scrambled eggs.

(2) The raw eggs are combined as an ingredient immediately before baking and the eggs are thoroughly cooked to a ready-to-eat form, such as a cake, muffin or bread.

(3) The preparation of the food is conducted under an HACCP plan that accomplishes the following:

- (i) Identifies the food to be prepared.
- (ii) Prohibits contacting ready-to-eat food with bare hands.
- (iii) Includes specifications and practices that ensure the following:

after (a) Salmonella Enteritidis growth is controlled before and cooking.

10- (b) Salmonella Enteritidis is destroyed by cooking the eggs according to the temperature and time specified in § 1203.61(A)(2).

including (iv) Contains the information specified in § 10-1211.22(B)(4) procedures that accomplish the following:

(a) Control cross contamination of ready-to-eat food with raw eggs.

contact (b) Delineate cleaning and sanitization procedures for food-surfaces.

employee (v) Describes the training program that ensures that the food responsible for the preparation of the food understands the procedures to be used.

### **Cross References**

This section cited in 7 Pa. Code § 46.423 (relating to consumer advisory required with respect to animal-derived foods that are raw, undercooked or not otherwise processed to eliminate pathogens).

## **EQUIPMENT, UTENSILS AND LINENS GENERAL STANDARD**

### **GENERAL STANDARD**

#### **§10-1205.01. Acceptability of food equipment certified or classified for sanitation by an ANSI-accredited certification program.**

Food equipment that is certified or classified for sanitation by an American National Standards Institute (ANSI)-accredited certification program shall be

deemed to comply with the applicable provisions of §§ 10-1205.21—10-1205.23, 10-1205.41—10-1205.44, 10-1205.61—10-1205.63 and 10-1205.81—10-1205.95.

## **MATERIALS FOR USE IN CONSTRUCTION AND REPAIR**

### **§10-1205.21. Materials in multiuse utensils and food-contact surfaces.**

(A) *Required characteristics.* Materials that are used in the construction of utensils and food-contact surfaces of equipment may not allow the migration of deleterious substances or impart colors, odors or tastes to food. Under normal use

conditions these materials shall be all of the following:

- (1) Safe.
- (2) Durable, corrosion-resistant and nonabsorbent.
- (3) Sufficient in weight and thickness to withstand repeated warewashing.
- (4) Finished to have a smooth, easily cleanable surface.
- (5) Resistant to pitting, chipping, crazing, scratching, scoring, distortion and decomposition.

(B) *Cast iron: use limitation.* Except as specified in paragraphs (1) and (2), cast iron may not be used for utensils or food-contact surfaces of equipment.

- (1) Cast iron may be used as a surface for cooking.
- (2) Cast iron may be used in utensils for serving food if the utensils are used only as part of an uninterrupted process from cooking through service.

(C) *Lead in ceramic, china and crystal utensils: use limitation.* Ceramic, china, crystal utensils and decorative utensils (such as hand painted ceramic or china) that are used in contact with food shall be lead-free or contain levels of lead not exceeding the limits of the following utensil categories:

Utensil Category	Description	Maximum Lead in mg/L (ppm)
Hot Beverage Mugs	Coffee Mugs	0.5
Large Hollowware	Bowls >= 1.1 L (1.16 Qt.)	1.0
Small Hollowware	Bowls < 1.1 L (1.16 Qt.)	2.0
Flat Utensils	Plates, Saucers	3.0

(D) *Copper: use limitation.*

as  
as  
backflow  
(1) Except as specified in paragraph (2), copper and copper alloys (such as brass) may not be used in contact with a food that has a pH below 6 (such as vinegar, fruit juice or wine) or for a fitting or tubing installed between a prevention device and a carbonator.

fermentation  
(2) Copper and copper alloys may be used in contact with beer brewing ingredients that have a pH below 6 in the prefermentation and steps of a beer brewing operation such as a brewpub or microbrewery.

acidic  
food.  
(E) *Galvanized metal: use limitation.* Galvanized metal may not be used for utensils or food-contact surfaces of equipment that are used in contact with

(F) *Sponges: use limitation.* Sponges may not be used in contact with cleaned and sanitized or in-use food-contact surfaces.

(G) *Lead in pewter alloys: use limitation.* Pewter alloys containing lead in excess of 0.05% may not be used as a food-contact surface.

(H) *Lead in solder and flux; use limitation.* Solder and flux containing lead in excess of 0.2% may not be used as a food-contact surface.

(I) *Wood: use limitation.* Except as specified in paragraphs (1)—(3), wood and wood wicker may not be used as a food-contact surface.

(1) Hard maple or an equivalently hard, close-grained wood may be used for the following:

as  
chopsticks.  
(i) Cutting boards; cutting blocks; bakers' tables; and utensils such as rolling pins, doughnut dowels, salad bowls, pizza peels and

temperature of  
(ii) Wooden paddles used in confectionery operations for pressure scraping kettles when manually preparing confections at a 110°C (230°F) or above.

(2) Whole, uncut, raw fruits and vegetables, and nuts in the shell may be kept in the wood shipping containers in which they were received, until the fruits, vegetables or nuts are used.

(3) If the nature of the food requires removal of rinds, peels, husks or shells before consumption, the whole, uncut, raw food may be kept in the following:

(i) Untreated wood containers.

(ii) Treated wood containers if the containers are treated with a preservative that meets the requirements specified in 21 (relating to preservatives for wood).

CFR 178.3800

(J) *Nonstick coatings use limitation.* Multiuse kitchenware (such as frying pans, griddles, sauce pans, cookie sheets and waffle bakers) that have a perfluorocarbon resin coating shall be used with nonscoring or nonscratching utensils and cleaning aids.

#### **Cross References**

This section cited in 7 Pa. Code § 46.3 (relating to definitions); 7 Pa. Code § 46.501 (relating to acceptability of food equipment certified or classified for sanitation by an ANSI-accredited certification program); 7 Pa. Code § 46.671 (relating to equipment: good repair and proper adjustment); and 7 Pa. Code § 46.691 (relating to utensils and temperature and pressure measuring devices: repair and calibration).

#### **§ 10-1205.22. Materials for surfaces that are nonfood-contact surfaces.**

Surfaces of equipment that are nonfood-contact surfaces, but are exposed to splash, spillage or other food soiling or that require frequent cleaning, shall be constructed of a corrosion-resistant, nonabsorbent and smooth material.

#### **Cross References**

This section cited in 7 Pa. Code § 46.501 (relating to acceptability of food equipment certified or classified for sanitation by an ANSI-accredited certification program); and 7 Pa. Code § 46.671 (relating to equipment: good repair and proper adjustment).

#### **§10-1205.23. Single-service and single-use articles: required characteristics.**

Materials that are used to make single-service and single-use articles shall be safe and clean, and may not allow the migration of deleterious substances, or impart colors, odors or tastes to food.

#### **Cross References**

This section cited in 7 Pa. Code § 46.501 (relating to acceptability of food equipment certified or



classified for sanitation by an ANSI-accredited certification program); 7 Pa. Code § 46.671 (relating to equipment: good repair and proper adjustment); and 7 Pa. Code § 46.691 (relating to utensils and temperature and pressure measuring devices: repair and calibration).

## **DESIGN AND CONSTRUCTION**

### **§10-1205.41. Durability and strength.**

(A) *Equipment and utensils.* Equipment and utensils shall be designed and constructed to be durable and to retain their characteristic qualities under normal use conditions.

(B) *Food temperature measuring devices.* Food temperature measuring devices may not have sensors or stems constructed of glass, except that thermometers with glass sensors or stems that are encased in a shatterproof coating (such as candy thermometers) may be used.

### **Cross References**

This section cited in 7 Pa. Code § 46.3 (relating to definitions); 7 Pa. Code § 46.501 (relating to acceptability of food equipment certified or classified for sanitation by an ANSI-accredited certification program); 7 Pa. Code § 46.671 (relating to equipment: good repair and proper adjustment); and 7 Pa. Code § 46.691 (relating to utensils and temperature and pressure measuring devices: repair and calibration).

### **§10-1205.42 Cleanability of multiuse food-contact surfaces and CIP equipment.**

(A) *Multiuse food-contact surfaces.* Multiuse food-contact surfaces shall be all of the following:

- (1) Smooth.
- (2) Free of breaks, open seams, cracks, chips, inclusions, pits and similar imperfections.
- (3) Free of sharp internal angles, corners and crevices.
- (4) Finished to have smooth welds and joints.
- (5) Except as specified in subsection (b), accessible for cleaning and inspection by one of the following methods:
  - (i) Without being disassembled.
  - (ii) By disassembling without the use of tools.

commonly  
screwdrivers,  
wrenches).

(iii) By easy disassembling with the use of handheld tools  
available to maintenance and cleaning personnel (such as  
pliers, open-end wrenches and Allen

(B) *Exception.* Subsection (a)(5) does not apply to cooking oil storage tanks, distribution lines for cooking oils or beverage syrup lines or tubes.

(C) *CIP equipment.* CIP equipment shall meet the characteristics specified in subsection (A) and shall be designed and constructed so that the following are accurate:

(1) Cleaning and sanitizing solutions circulate throughout a fixed system and contact all interior food-contact surfaces.

(2) The system is self-draining or capable of being completely drained of cleaning and sanitizing solutions.

(3) If the CIP equipment is not designed for disassembly during cleaning, it is designed with inspection access points to ensure that all interior foodcontact surfaces throughout the fixed system are being effectively cleaned.

### **Cross References**

This section cited in 7 Pa. Code § 46.3 (relating to definitions); 7 Pa. Code § 46.501 (relating to acceptability of food equipment certified or classified for sanitation by an ANSI-accredited certification program); 7 Pa. Code § 46.544 (relating to cleanability of hot oil filtering equipment, can openers, nonfood-contact surfaces, kick plates and ventilation hood systems); 7 Pa. Code § 46.671 (relating to equipment: good repair and proper adjustment); 7 Pa. Code § 46.691 (relating to utensils and temperature and pressure measuring devices: repair and calibration).

### **§10-1205.43. “V” threads: use limitation.**

Except for hot oil cooking or filtering equipment, “V” type threads may not be used on food-contact surfaces.

### **Cross References**

This section cited in 7 Pa. Code § 46.501 (relating to acceptability of food equipment certified or classified for sanitation by an ANSI-accredited certification program); 7 Pa. Code § 46.671 (relating to equipment: good repair and proper adjustment); and 7 Pa. Code § 46.691 (relating to utensils and temperature and pressure measuring devices: repair and calibration).

**§10-1205.44. Cleanability of hot oil filtering equipment, can openers, nonfood-contact surfaces, kick plates and ventilation hood systems.**

(A) *Hot oil filtering equipment.* Hot oil filtering equipment shall meet the characteristics specified in § 46.542 (relating to cleanability of multiuse foodcontact surfaces and CIP equipment), as applicable, and shall be readily accessible for filter replacement and cleaning of the filter.

(B) *Can openers.* Cutting or piercing parts of can openers shall be readily removable for cleaning and for replacement.

(C) *Nonfood-contact surfaces.* Nonfood-contact surfaces shall be free of unnecessary ledges, projections and crevices, and designed and constructed to allow easy cleaning and to facilitate maintenance.

(D) *Kick plates, removable.* Kick plates shall be designed so that the areas behind them are accessible for inspection and cleaning by being both of the following:

(1) Removable by one of the methods specified in § 46.542(a)(5) or capable of being rotated open.

(2) Removable or capable of being rotated open without unlocking equipment doors.

(E) *Ventilation hood systems and filters.* Filters or other grease extracting equipment, if not designed to be cleaned in place, shall be designed to be readily removable for cleaning and replacement.

**Cross References**

This section cited in 7 Pa. Code § 46.501 (relating to acceptability of food equipment certified or classified for sanitation by an ANSI-accredited certification program); 7 Pa. Code § 46.671 (relating to equipment: good repair and proper adjustment); and 7 Pa. Code § 46.691 (relating to utensils and temperature and pressure measuring devices: repair and calibration).

**ACCURACY**

**§ 10-1205.61. Accuracy of temperature measuring devices for food.**

(A) *Accuracy range for Celsius-scaled or Celsius/Fahrenheit-scaled devices.* Food temperature measuring devices that are scaled only in Celsius or dually scaled in Celsius and Fahrenheit shall be accurate to  $\pm 1^{\circ}\text{C}$  in the intended range

of use.

(B) *Accuracy for Fahrenheit-scaled devices.* Food temperature measuring devices that are scaled only in Fahrenheit shall be accurate to  $\pm 2^{\circ}\text{F}$  in the intended range of use.

### **Cross References**

This section cited in 7 Pa. Code § 46.102 (relating to duties of the person in charge); 7 Pa. Code

§ 46.501 (relating to acceptability of food equipment certified or classified for sanitation by an

ANSI-accredited certification program); 7 Pa. Code § 46.671 (relating to equipment: good repair and proper adjustment); and 7 Pa. Code § 46.691 (relating to utensils and temperature and pressure measuring devices: repair and calibration).

### **§10-1205.62. Accuracy of temperature measuring devices for ambient air and water.**

(A) *Accuracy range for Celsius-scaled or Celsius/Fahrenheit-scaled devices.* Ambient air and water temperature measuring devices that are scaled in Celsius or dually scaled in Celsius and Fahrenheit shall be designed to be easily readable and accurate to  $\pm 1.5^{\circ}\text{C}$  in the intended range of use.

(B) *Accuracy for Fahrenheit-scaled devices.* Ambient air and water temperature measuring devices that are scaled only in Fahrenheit shall be accurate to  $\pm 3^{\circ}\text{F}$  in the intended range of use.

### **Cross References**

This section cited in 7 Pa. Code § 46.501 (relating to acceptability of food equipment certified or

classified for sanitation by an ANSI-accredited certification program); 7 Pa. Code § 46.671 (relating to equipment: good repair and proper adjustment); and 7 Pa. Code § 46.691 (relating to utensils and temperature and pressure measuring devices: repair and calibration).

### **§10-1205.63. Accuracy of pressure measuring devices on mechanical warewashing equipment.**

Pressure measuring devices that display the pressures in the water supply line for the fresh hot water sanitizing rinse on mechanical warewashing equipment shall have increments of 7 kilopascals (1 pound per square inch) or smaller, and shall be accurate to  $\pm 14$  kilopascals ( $\pm 2$  pounds per square inch) in the 100—170 kilopascals (15—25 pounds per square inch) range.

### **Cross References**

This section cited in 7 Pa. Code § 46.501 (relating to acceptability of food equipment certified or classified for sanitation by an ANSI-accredited certification program); 7 Pa. Code § 46.671 (relating to equipment: good repair and proper adjustment); and 7 Pa. Code § 46.691 (relating to utensils and temperature and pressure measuring devices: repair and calibration).

## **FUNCTIONALITY**

### **§10-1205.81. Ventilation hood systems, drip prevention.**

Exhaust ventilation hood systems in food preparation and warewashing areas (including components such as hoods, fans, guards and ducting) shall be designed to prevent grease or condensation from draining or dripping onto food, equipment, utensils, linens and single-service and single-use articles.

## **Cross References**

This section cited in 7 Pa. Code § 46.501 (relating to acceptability of food equipment certified or classified for sanitation by an ANSI-accredited certification program); 7 Pa. Code § 46.671 (relating to equipment: good repair and proper adjustment); and 7 Pa. Code § 46.691 (relating to utensils and temperature and pressure measuring devices: repair and calibration).

### **§10-1205.82. Equipment openings, closures and deflectors.**

(A) *Overlap and slope of covers.* A cover or lid for equipment shall overlap the opening and be sloped to drain.

(B) *Flange requirement.* An opening located within the top of a unit of equipment that is designed for use with a cover or lid shall be flanged upward at least 5 millimeters (2/10 of an inch).

(C) *Watertight joint.* Except as specified in subsection (d), fixed piping, temperature measuring devices, rotary shafts and other parts extending into equipment shall be provided with a watertight joint at the point where the item enters the equipment.

(D) *Alternative to watertight joint.* If a watertight joint is not provided, the piping, temperature measuring devices, rotary shafts and other parts extending through the openings shall be equipped with an apron designed to deflect condensation, drips and dust from openings into the food. The openings shall be flanged as specified in subsection (B).

## **Cross References**

This section cited in 7 Pa. Code § 46.501 (relating to acceptability of food equipment certified or classified for sanitation by an ANSI-accredited certification program); 7 Pa. Code § 46.671 (relating to equipment: good repair and proper adjustment); and 7 Pa. Code § 46.691 (relating to utensils and temperature and pressure measuring devices: repair and calibration).

**§10-1205.83. Dispensing equipment: protection of equipment and food.**

In equipment that dispenses or vends liquid food or ice in unpackaged form, the following shall occur:

- (1) The delivery tube, chute orifice and splash surfaces directly above the container receiving the food shall be designed in a manner, such as with barriers, baffles or drip aprons, so that drips from condensation and splash are diverted from the opening of the container receiving the food.
- (2) The delivery tube, chute and orifice shall be protected from manual contact such as by being recessed.
- (3) The delivery tube or chute and orifice of equipment used to vend liquid food or ice in unpackaged form to self-service consumers shall be designed so that the delivery tube or chute and orifice are protected from dust, insects, rodents and other contamination by a self-closing door if the equipment is either of the following:
  - (i) Located in an outside area that does not otherwise afford the protection of an enclosure against the rain, windblown debris, insects, rodents and other contaminants that are present in the environment.
  - (ii) Available for self-service during hours when it is not under the fulltime supervision of a food employee.
- (4) The dispensing equipment actuating lever or mechanism and filling device of consumer self-service beverage dispensing equipment shall be designed to prevent contact with the lip-contact surface of glasses or cups that are refilled.

**Cross References**

This section cited in 7 Pa. Code § 46.307 (relating to refilling returnables); 7 Pa. Code § 46.501

(relating to acceptability of food equipment certified or classified for sanitation by an ANSI-accredited certification program); 7 Pa. Code § 46.671 (relating to equipment: good repair and proper adjustment); and 7 Pa. Code § 46.691 (relating to utensils and temperature and pressure measuring devices: repair and calibration).

**§10-1205.84. Vending machines.**

(A) *Vending stage closure.* The dispensing compartment of a vending machine—including a machine that is designed to vend prepackaged snack food that is not potentially hazardous (such as chips, party mixes and pretzels)—shall be equipped with a self-closing door or cover if the machine is either of the following:

- protection  
other
- (1) Located in an outside area that does not otherwise afford the protection of an enclosure against the rain, windblown debris, insects, rodents and other contaminants that are present in the environment.
  - (2) Available for self-service during hours when it is not under the full supervision of a food employee.

(B) *Automatic shutoff.*

following

(1) A machine vending potentially hazardous food shall have an automatic control that prevents the machine from vending food under either of the circumstances:

that  
food  
food).

(i) If there is a power failure, mechanical failure or other condition results in an internal machine temperature that cannot maintain temperatures as specified in 10-1202.01 et seq (relating to food).

machine

(ii) If a condition specified in subparagraph (A) occurs, until the machine is serviced and restocked with food that has been maintained at temperatures specified in §10-1202.01 et seq.

dispensing

(2) When the automatic shutoff within a refrigerated vending machine potentially hazardous food is activated, the ambient temperature may not exceed 5°C (41°F) or 7°C (45°F) as specified in § 10-1203.85(A)(3) (relating to potentially hazardous food: hot and cold holding) for more than 30 minutes immediately after the machine is filled, serviced or restocked.

dispensing

(3) When the automatic shutoff within a hot holding vending machine potentially hazardous food is activated, the ambient temperature may

not be less than 58°C (135°F) for more than 120 minutes immediately after the machine is filled, serviced or restocked.

(C) *Can openers.* Cutting or piercing parts of can openers on vending machines shall be protected from manual contact, dust, insects, rodents and other contamination.

(D) *Vending machines that dispense liquids in paper containers.* Vending machines designed to store beverages that are packaged in containers made from paper products shall be equipped with diversion devices and retention pans or drains for container leakage.

(E) *Vending machines that dispense liquid food in bulk.* Vending machines that dispense liquid food in bulk shall be both of the following:

(1) Provided with an internally mounted waste receptacle for the collection of drip, spillage, overflow or other internal wastes.

(2) Equipped with an automatic shutoff device that will place the machine out of operation before the waste receptacle overflows.

(F) *Requirements for a liquid shutoff device.* Shutoff devices described in subsection (E)(2) shall prevent water or liquid food from continuously running if there is a failure of a flow control device in the water or liquid food system or waste accumulation that could lead to overflow of the waste receptacle.

(G) *Doors and openings.*

(1) Vending machine doors and access opening covers to food and container storage spaces shall be tight-fitting so that the space along the entire interface between the doors or covers and the cabinet of the machine, if the doors or covers are in a closed position, is no greater than 1.5 millimeters or 1/16 inch by one or more of the following:

(i) Being covered with louvers, screens or materials that provide an equivalent opening of not greater than 1.5 millimeters or 1/16 inch. Screening of 12 mesh or more to 2.5 centimeters (12 mesh to 1 inch) meets this requirement.

(ii) Being effectively gasketed.



inch (iii) Having interface surfaces that are at least 13 millimeters or 1/2 wide.

(iv) Jambs or surfaces used to form an L-shaped entry path to the interface.

(2) Vending machine service connection openings through an exterior wall of the machine, shall be closed by sealants, clamps, or grommets so that the openings are no larger than 1.5 millimeters or 1/16 inch.

### **Cross References**

This section cited in 7 Pa. Code § 46.385 (relating to potentially hazardous food: hot and cold holding); 7 Pa. Code § 46.501 (relating to acceptability of food equipment certified or classified for sanitation by an ANSI-accredited certification program); 7 Pa. Code § 46.671 (relating to equipment: good repair and proper adjustment); and 7 Pa. Code § 46.691 (relating to utensils and temperature and pressure measuring devices: repair and calibration).

### **§10-1205.85. Bearings and gear boxes: leakproof.**

Equipment containing bearings and gears that require lubricants shall be designed and constructed so that the lubricant cannot leak, drip or be forced into food or onto food-contact surfaces.

### **Cross References**

This section cited in 7 Pa. Code § 46.501 (relating to acceptability of food equipment certified or classified for sanitation by an ANSI-accredited certification program); 7 Pa. Code § 46.671 (relating to equipment: good repair and proper adjustment); and 7 Pa. Code § 46.691 (relating to utensils and temperature and pressure measuring devices: repair and calibration).

### **§10-1205.86. Beverage tubing: separation.**

Beverage tubing and cold-plate beverage cooling devices may not be installed in contact with stored ice. This section does not apply to cold plates that are constructed integrally with an ice storage bin.

### **Cross References**

This section cited in 7 Pa. Code § 46.501 (relating to acceptability of food equipment certified or classified for sanitation by an ANSI-accredited certification program); 7 Pa. Code § 46.671 (relating to equipment: good repair and proper adjustment); and 7 Pa. Code §

46.691 (relating to utensils and temperature and pressure measuring devices: repair and calibration).

**§10-1205.87. Ice units: separation of drains.**

Liquid waste drain lines may not pass through an ice machine or ice storage bin.

**Cross References**

This section cited in 7 Pa. Code § 46.501 (relating to acceptability of food equipment certified or classified for sanitation by an ANSI-accredited certification program); 7 Pa. Code § 46.671 (relating to equipment: good repair and proper adjustment); and 7 Pa. Code § 46.691 (relating to utensils and temperature and pressure measuring devices: repair and calibration).

**§10-1205.88. Condenser unit: separation.**

If a condenser unit is an integral component of equipment, the condenser unit shall be separated from the food and food storage space by a dustproof barrier.

**Cross References**

This section cited in 7 Pa. Code § 46.501 (relating to acceptability of food equipment certified or classified for sanitation by an ANSI-accredited certification program); 7 Pa. Code § 46.671 (relating to equipment: good repair and proper adjustment); and 7 Pa. Code § 46.691 (relating to utensils and temperature and pressure measuring devices: repair and calibration).

**§10-1205.89. Molluscan shellfish tanks.**

(A) *General.* Except as specified in subsection (B), molluscan shellfish life support system display tanks may not be used to display shellfish that are offered for human consumption and shall be conspicuously marked so that it is obvious to the consumer that the shellfish are for display only.

(B) *Exception.* Molluscan shellfish life-support system display tanks that are used to store and display shellfish that are offered for human consumption shall be operated and maintained in accordance with the following:

(1) A variance granted by the Department in accordance with the procedure described in § 10-1211.03(A) (relating to variances).

(2) An HACCP plan that is submitted by the food facility operator and approved as specified in § 10-1211.03(B), ensuring the following:

(i) Water used with fish other than molluscan shellfish does not flow into the molluscan tank.

not (ii) The safety and quality of the shellfish as they were received are  
compromised by the use of the tank.

specified (iii) The identity of the source of the shellstock is retained as  
in § 10-1202.50 (relating to shellstock: maintaining identification).

### **Cross References**

This section cited in 7 Pa. Code § 46.501 (relating to acceptability of food equipment certified or classified for sanitation by an ANSI-accredited certification program); 7 Pa. Code § 46.671 (relating to equipment: good repair and proper adjustment); 7 Pa. Code § 46.691 (relating to utensils and temperature and pressure measuring devices: repair and calibration); and 7 Pa. Code § 46.1122 (relating to HACCP plans).

### **§10-1205.90. Temperature measuring devices.**

(A) *Location of device in storage unit.* In a mechanically refrigerated or hot food storage unit, the sensor of a temperature measuring device shall be located to measure the air temperature or a simulated product temperature in the warmest part of a mechanically refrigerated unit and in the coolest part of a hot food storage unit.

(B) *General device requirement.* Except as specified in subsection (c), cold or hot holding equipment used for potentially hazardous food shall be designed to include-and shall be equipped with at least one integral or permanently affixed temperature measuring device that is located to allow easy viewing of the device's temperature display.

(C) *Exception to device requirement.* Subsection (B) does not apply to equipment for which the placement of a temperature measuring device is not a practical means for measuring the ambient air surrounding the food because of the design, type and use of the equipment, such as calrod units, heat lamps, cold plates, bainmaries, steam tables, insulated food transport containers and salad bars.

(D) *Easily readable.* Temperature measuring devices shall be designed to be easily readable.

(E) *Devices on warewashing machines.* Food temperature measuring devices and water temperature measuring devices on warewashing machines shall have

numerical scale, printed record or digital readout in increments no greater than 1°C or 2°F in the intended range of use.

### **Cross References**

This section cited in 7 Pa. Code § 46.501 (relating to acceptability of food equipment certified or classified for sanitation by an ANSI-accredited certification program); 7 Pa. Code § 46.671 (relating to equipment: good repair and proper adjustment); and 7 Pa. Code § 46.691 (relating to utensils and temperature and pressure measuring devices: repair and calibration).

### **§10-1205.91. Warewashing machines.**

(A) *Data plate summarizing operating specifications.* A warewashing machine shall be provided with an easily accessible and readable data plate affixed to the machine by the manufacturer that indicates the machine's design and operating specifications, including the following:

- (1) Temperatures required for washing, rinsing and sanitizing.
- (2) Pressure required for the fresh water sanitizing rinse unless the machine is designed to use only a pumped sanitizing rinse.
- (3) Conveyor speed for conveyor machines or cycle time for stationary rack machines.

(B) *Internal baffles.* Warewashing machine wash and rinse tanks shall be equipped with baffles, curtains or other means to minimize internal cross contamination of the solutions in wash and rinse tanks.

(C) *Temperature measuring devices.* A warewashing machine shall be equipped with a temperature measuring device that indicates the temperature in the following locations or instances:

- (1) In each wash and rinse tank.
- (2) As the water enters the hot water sanitizing final rinse manifold or in the chemical sanitizing solution tank.

(D) *Detergent and sanitizer level indicator.* A warewashing machine that is installed after December 13, 2003, shall be designed and equipped to automatically dispense detergents and sanitizers and incorporate a visual means to verify that detergents and sanitizers are delivered or a visual or audible alarm to signal

if the detergents and sanitizers are not delivered to the respective washing and sanitizing cycles.

(E) *Flow pressure device*. Warewashing machines that provide a fresh hot water sanitizing rinse shall be equipped with a pressure gauge or similar device such as a transducer that measures and displays the water pressure in the supply line immediately before entering the warewashing machine. If the flow pressure measuring device is upstream of the fresh hot water sanitizing rinse control valve, the device shall be mounted in a 6.4 millimeter or 1/4 inch Iron Pipe Size valve. This subsection does not apply to a machine that uses only a pumped or recirculated sanitizing rinse.

### **Cross References**

This section cited in 7 Pa. Code § 46.501 (relating to acceptability of food equipment certified or classified for sanitation by an ANSI-accredited certification program); 7 Pa. Code § 46.671 (relating to equipment: good repair and proper adjustment); and 7 Pa. Code § 46.691 (relating to utensils and temperature and pressure measuring devices: repair and calibration).

### **§10-1205.92. Manual warewashing machines.**

If hot water is used for sanitization in manual warewashing operations, the sanitizing compartment of the sink shall comply with the following:

- (1) Be designed with an integral heating device that is capable of maintaining water at a temperature not less than 77°C (171°F).
- (2) Be provided with a rack or basket to allow complete immersion of equipment and utensils into the hot water.

### **Cross References**

This section cited in 7 Pa. Code § 46.501 (relating to acceptability of food equipment certified or classified for sanitation by an ANSI-accredited certification program); 7 Pa. Code § 46.671 (relating to equipment: good repair and proper adjustment); 7 Pa. Code § 46.691 (relating to utensils and temperature and pressure measuring devices: repair and calibration); and 7 Pa. Code § 46.774 (relating to storing clean items).

### **§ 10-1205.93. Warewashing sinks and drainboards: self-draining.**

Sinks and drainboards of warewashing sinks and machines shall be selfdraining.

### **Cross References**

This section cited in 7 Pa. Code § 46.501 (relating to acceptability of food equipment certified or

classified for sanitation by an ANSI-accredited certification program); 7 Pa. Code § 46.671 (relating to equipment: good repair and proper adjustment); 7 Pa. Code § 46.691 (relating to utensils and temperature and pressure measuring devices: repair and calibration); and 7 Pa. Code § 46.774 (relating to storing clean items).

**§10-1205.94. Equipment compartments: drainage.**

Equipment compartments that are subject to accumulation of moisture due to conditions such as condensation, food or beverage drip, or water from melting ice shall be sloped to an outlet that allows complete draining.

**Cross References**

This section cited in 7 Pa. Code § 46.501 (relating to acceptability of food equipment certified or classified for sanitation by an ANSI-accredited certification program); 7 Pa. Code § 46.671 (relating to equipment: good repair and proper adjustment); and 7 Pa. Code § 46.691 (relating to utensils and temperature and pressure measuring devices: repair and calibration).

**§10-1205.95. Case lot handling equipment: moveability.**

Equipment, such as dollies, pallets, racks and skids used to store and transport large quantities of packaged foods received from a supplier in a cased or overwrapped lot, shall be designed to be moved by hand or by conveniently available equipment such as hand trucks and forklifts.

**Cross References**

This section cited in 7 Pa. Code § 46.321 (relating to food storage); 7 Pa. Code § 46.501 (relating to acceptability of food equipment certified or classified for sanitation by an ANSI-accredited certification program); 7 Pa. Code § 46.671 (relating to equipment: good repair and proper adjustment); 7 Pa. Code § 46.691 (relating to utensils and temperature and pressure measuring devices: repair and calibration); and 7 Pa. Code § 46.774 (relating to storing clean items).

**NUMBERS AND CAPACITIES OF EQUIPMENT**

**§ 10-1206.11. Cooling, heating and holding capacities.**

Equipment for cooling and heating food, and holding cold and hot food, shall be sufficient in number and capacity to provide food temperatures as specified in §10-1202.01 et seq (relating to food).

**§ 10-1206.12. Manual warewashing: sink compartment requirements.**

(A) *General: three compartments required.* Except as specified in subsection (C), a sink with at least three compartments shall be provided for manually washing, rinsing, and sanitizing equipment and utensils.

(B) *Large equipment and utensils.* Sink compartments shall be large enough to accommodate immersion of the largest equipment and utensils that require cleaning by immersion. If equipment or utensils are too large for the warewashing sink, a warewashing machine or alternative equipment as specified in subsection (C) shall be used.

(C) *Exception for approved alternative equipment.* Alternative manual warewashing equipment may be used when there are special cleaning needs or constraints and its use is approved by the Department. Alternative manual warewashing equipment may include any of the following:

(1) High-pressure detergent sprayers.

(2) Low- or line-pressure spray detergent foamers.

(3) Other task-specific cleaning equipment, such as utensils supplied by an equipment manufacturer.

(4) Brushes or similar bristled implements.

(5) Two-compartment sinks as specified in § 10-1206.76(F) (relating to manual warewashing equipment).

(6) Receptacles that substitute for the compartments of a multicompartment sink.

### **Cross References**

This section cited in 7 Pa. Code § 46.674 (relating to warewashing equipment: mechanical or manual); 7 Pa. Code § 46.717 (relating to washing procedures for alternative warewashing equipment); and 7 Pa. Code § 46.718 (relating to rinsing procedures).

### **§10-1206.13. Drainboards.**

Drainboards, utensil racks or tables large enough to accommodate all soiled and cleaned items that may accumulate during hours of operation shall be provided for necessary utensil holding before cleaning and after sanitizing.

### **Cross References**

This section cited in 7 Pa. Code § 46.674 (relating to warewashing equipment: mechanical or manual).

**§10-1206.14. Ventilation hood systems: adequacy.**

Ventilation hood systems and devices shall be sufficient in number and capacity to prevent grease or condensation from collecting on walls, ceilings and fixtures.

**§10-1206.15. Clothes washers and dryers.**

A mechanical clothes washer and dryer shall be provided and used at a food facility if work clothes or linens are laundered on the premises. This section does not apply if on-premises laundering is limited to wiping cloths intended to be used moist, or wiping cloths are air-dried as specified in § 10-1207.72 (relating to wiping cloths: air-drying locations).

**Cross References**

This section cited in 7 Pa. Code § 46.752 (relating to methods of laundering); and 7 Pa. Code

§ 46.772 (relating to wiping cloths: air-drying locations).

**NUMBERS AND CAPACITIES OF UTENSILS, TEMPERATURE MEASURING DEVICES AND TESTING DEVICES**

**§10-1206.31. Consumer self-service utensils.**

A food-dispensing utensil shall be available for each container displayed at a consumer self-service unit (such as a buffet or salad bar).

**§10-1206.32. Food temperature measuring devices.**

Food temperature measuring devices shall be provided and readily accessible for use in ensuring attainment and maintenance of food temperatures as specified in §10-1202.01 et seq (relating to food). A food temperature measuring device with a suitable small-diameter probe that is designed to measure the temperature of thin masses shall be provided and readily accessible to accurately measure the temperature of thin foods, such as meat patties or fish fillets.

**§ 10-1206.33. Temperature measuring devices for manual warewashing.**

In manual warewashing operations, a temperature measuring device shall be provided and readily accessible for frequently measuring the washing and sanitizing temperatures

**§10-1206.34. Sanitizing solution testing devices.**

A test kit or other device that accurately measures the concentration in mg/L or ppm of sanitizing solutions shall be provided.

**LOCATION AND INSTALLATION OF EQUIPMENT**

**§10-1206.51. Location of equipment, clothes washers and dryers and storage cabinets to prevent contamination.**

(A) *Prohibited locations.* Except as specified in subsection (b), equipment, a



and cabinet used for the storage of food, or a cabinet that is used to store cleaned  
sanitized equipment, utensils, laundered linens and single-service and single-use  
articles may not be located in the following:

- (1) Locker rooms.
- (2) Toilet rooms.
- (3) Garbage rooms.
- (4) Mechanical rooms.
- (5) Under sewer lines that are not shielded to intercept potential drips.
- (6) Under leaking water lines including leaking automatic fire sprinkler heads or under lines on which water has condensed.
- (7) Under open stairwells.
- (8) Under other sources of contamination.

(B) *Exception.* A storage cabinet used for linens or single-service or single-use articles may be stored in a locker room.

(C) *Mechanical clothes washer or dryer.* If a mechanical clothes washer or dryer is provided, it shall be located so that the washer or dryer is protected from contamination and only where there is no exposed food; clean equipment, utensils  
and linens; and unwrapped single-service and single-use articles.

**§10-1206.52. Installation of fixed equipment, fixed table-mounted equipment and fixed floor-mounted equipment.**

(A) *Fixed equipment: spacing or sealing.* Equipment that is fixed because it is not easily movable shall be installed so that it is both of the following:

- (1) Spaced to allow access for cleaning along the sides, behind and above the equipment.
- (2) Spaced from adjoining equipment, walls and ceilings a distance of not more than 1 millimeter or 1/32 inch or—if the equipment is exposed to spillage  
or seepage—sealed to adjoining equipment or walls.

(B) *Fixed table-mounted equipment.* Table-mounted equipment that is not easily

movable shall be installed to allow cleaning of the equipment and areas underneath and around the equipment by being one of the following:

(1) Sealed to the table.

(2) Elevated on legs that provide at least one of the following:

(i) 10 centimeters (4 inches) clearance between the table and the equipment.

(ii) 7.5 centimeters (3 inches) clearance between the table and the equipment if the horizontal distance of the table top under the equipment is no more than 50 centimeters (20 inches) from the point of access for cleaning.

(iii) 5 centimeters (2 inches) clearance between the table and the equipment if the horizontal distance of the table top under the equipment is no more than 7.5 centimeters (3 inches) from the point of access for cleaning.

*(C) Fixed floor-mounted equipment.*

(1) Except as specified in paragraph (2) or (3), floor-mounted equipment that is not easily movable shall be sealed to the floor or elevated on legs that provide at least a 15 centimeters (6 inches) clearance between the floor and the equipment.

(2) If no part of the floor under the floor-mounted equipment is more than 15 centimeters (6 inches) from the point of cleaning access, the clearance space may be only 10 centimeters (4 inches).

(3) This section does not apply to display shelving units, display refrigeration units and display freezer units located in the consumer shopping areas of a retail food store, if the floor under the units is maintained clean.

**Cross References**

This section cited in 7 Pa. Code § 46.671 (relating to equipment: good repair and proper adjustment).

**MAINTENANCE AND OPERATION OF EQUIPMENT**

**§ 10-1206.71. Equipment: good repair and proper adjustment.**

(A) *General.* Equipment shall be maintained in a state of repair and condition that meets the requirements specified in §§ 10-1205.01, 10-1205.21—10-1205.23, 10-1205.41—10-1205.44, 10-1205.61—10-1205.63 and 10-1205.81—10-1205.95.

(B) *Equipment components.* Equipment components such as doors, seals, hinges, fasteners and kick plates shall be kept intact, tight and adjusted in accordance with manufacturer's specifications.

(C) *Cutting or piercing parts of can openers.* Cutting or piercing parts of can openers shall be kept sharp to minimize the creation of metal fragments that can contaminate food when the container is opened.

**§10-1206.72. Cutting surfaces.**

Surfaces such as cutting blocks and boards that are subject to scratching and scoring shall be resurfaced if they can no longer be effectively cleaned and sanitized, or discarded if they are not capable of being resurfaced.

**§ 10-1206.73. Microwave ovens.**

Microwave ovens shall meet the safety standards specified in 21 CFR 1030.10 (relating to microwave ovens).

**§ 10-1206.74. Warewashing equipment: mechanical or manual.**

(A) *Cleaning frequency.* A warewashing machine; the compartments of sinks, basins, or other receptacles used for washing and rinsing equipment, utensils, or raw foods, or laundering wiping cloths; and drainboards or other equipment used to substitute for drainboards as specified in § 10-1206.13 (relating to drainboards) shall be cleaned as follows:

- (1) Before use.
- (2) Throughout the day at a frequency necessary to prevent recontamination of equipment and utensils and to ensure that the equipment performs its intended function.
- (3) If used, at least every 24 hours.

(B) *Cleaning agents.* When used for warewashing, the wash compartment of a sink, mechanical warewasher or wash receptacle of alternative manual warewashing equipment as specified in § 10-1206.12(c) (relating to manual warewashing:

sink compartment requirements), shall contain a wash solution of soap, detergent, acid cleaner, alkaline cleaner, degreaser, abrasive cleaner or other cleaning agent according to the cleaning agent manufacturer's label instructions.

(C) *Clean solutions.* The wash, rinse and sanitize solutions shall be maintained clean.

(D) *Chemical sanitization: temperature, pH, concentration and hardness.* A chemical sanitizer used in a sanitizing solution for a manual or mechanical operation at exposure times specified in § 10-1207.31(c)(3) (relating to sanitization: requirement, frequency and methods) shall be listed in 21 CFR 178.1010 (relating to sanitizing solutions), shall be used in accordance with the EPA-approved manufacturer's label use instructions, and shall be used as follows:

(1) A chlorine solution shall have a minimum temperature based on the concentration and pH of the solution as listed in the following chart:

Minimum Concentration	Minimum Temperature for Solution with pH of 10 or less	Minimum Temperature for Solution with pH of 8 or less
25 mg/L (ppm)	49 [deg] C (120 [deg] F)	49 [deg] C (120 [deg] F)
50 mg/L (ppm)	38 [deg] C (100 [deg] F)	24 [deg] C (75 [deg] F)
100 mg/L (ppm)	13 [deg] C (55 [deg] F)	13 [deg] C (55 [deg] F)

(2) An iodine solution shall have the following:

(i) A minimum temperature of 24°C (75°F).

(ii) A pH of 5.0 or less or a pH no higher than the level for which the manufacturer specifies the solution is effective.

(iii) A concentration between 12.5 mg/L (ppm) and 25 mg/L (ppm).

(3) A quaternary ammonium compound solution shall:

(i) Have a minimum temperature of 24°C (75°F).

(ii) Have a concentration as specified in § 46.731 and as indicated the manufacturer's use directions included in the labeling.

(iii) Be used only in water with 500 mg/L (ppm) hardness or less or

water having a hardness no greater than specified by the manufacturer's label.

(4) If another solution of a chemical specified in paragraphs (1)—(3) is used, the food facility operator shall demonstrate to the Department that the solution achieves sanitization and the use of the solution may be approved by the Department.

(5) If a chemical sanitizer other than chlorine, iodine or a quaternary ammonium compound is used, it shall be applied in accordance with the manufacturer use directions included in the labeling.

(E) *Determining chemical sanitizer concentration.* Concentration of the sanitizing solution shall be accurately determined by using a test kit or other device.

### **Cross References**

This section cited in 7 Pa. Code § 46.304 (relating to wiping cloths: use limitations); 7 Pa. Code

§ 46.676 (relating to manual warewashing equipment); 7 Pa. Code § 46.731 (relating to sanitization: requirement, frequency and methods); 7 Pa. Code § 46.752 (relating to methods of laundering); and 7 Pa. Code § 46.772 (relating to wiping cloths: air-drying locations).

### **§10-1206.75 Mechanical warewashing equipment.**

(A) *Manufacturers' operating instructions.*

(1) A warewashing machine and its auxiliary components shall be operated in accordance with the machine's data plate and other manufacturer's instructions.

(2) A warewashing machine's conveyor speed or automatic cycle times shall be maintained accurately timed in accordance with manufacturer's specifications.

(B) *Wash solution temperature where hot water is used to sanitize.* The temperature of the wash solution in spray type warewashers that use hot water to sanitize may not be less than the following temperature, as applicable:

(1) For a stationary rack, single temperature machine, 74°C (165°F).

(2) For a stationary rack, dual temperature machine, 66°C (150°F).

(3) For a single tank, conveyor, dual temperature machine, 71°C (160°F).

(4) For a multitank, conveyor, multitemperature machine, 66°C (150°F).

(C) *Wash solution temperature where chemicals are used to sanitize.* The temperature of the wash solution in spray-type warewashers that use chemicals to sanitize may not be less than 49°C (120°F).

(D) *Sanitizing rinse temperature where hot water is used to sanitize.*

(1) Except as specified in paragraph (2), in a mechanical operation, the temperature of the fresh hot water sanitizing rinse as it enters the manifold may not be more than 90°C (194°F), or less than the following, as applicable:

(i) For a stationary rack, single temperature machine, 74°C (165°F).

(ii) For all other machines, 82°C (180°F).

(2) The maximum temperature specified in paragraph (1) does not apply to the high pressure and temperature systems with wand-type, hand-held, spraying devices used for the in-place cleaning and sanitizing of equipment such as meat saws.

(E) *Sanitization pressure.* The flow pressure of the fresh hot water sanitizing rinse in a warewashing machine may not be less than 100 kilopascals (15 pounds per square inch) or more than 170 kilopascals (25 pounds per square inch) as measured in the water line immediately downstream or upstream from the fresh hot water sanitizing rinse control valve.

### **Cross References**

This section cited in 7 Pa. Code § 46.731 (relating to sanitization: requirement, frequency and methods).

### **§10-1206.76. Manual warewashing equipment.**

(A) *Warewashing sinks: use limitation.* A warewashing sink may not be used for handwashing. Warewashing sinks may not be used for food preparation unless

(b) the use is approved by the Department, the procedures specified in subsection are followed and limited food preparation or warewashing occurs.

(B) *Sanitizing warewashing sink after other uses.* If a warewashing sink is used to wash wiping cloths, wash produce or thaw food, the sink shall be cleaned as specified in § 10-1206.74(A) (relating to warewashing equipment: mechanical or manual) before and after each time it is used to wash wiping cloths, wash produce

or thaw food. Sinks used to wash or thaw food shall be sanitized as specified in § 10-1207.31 (relating to sanitization: requirement, frequency and methods) before and after using the sink to wash produce or thaw food.

(C) *Wash solution temperature.* The temperature of the wash solution in manual warewashing equipment shall be maintained at not less than 43°C (110°F) or the temperature specified on the cleaning agent manufacturer's label instructions.

(D) *Hot water sanitization temperatures.* If immersion in hot water is used for sanitizing in a manual operation, the temperature of the water shall be maintained at 77°C (171°F) or above.

(E) *Chemical sanitization using detergent-sanitizers.* If a detergent-sanitizer is used to sanitize in a cleaning and sanitizing procedure where there is no distinct water rinse between the washing and sanitizing steps, the agent applied in the sanitizing step shall be the same detergent-sanitizer that is used in the washing step.

(F) *Use of two-compartment sink.* A two-compartment sink may not be used for warewashing operations where cleaning and sanitizing solutions are used for a continuous or intermittent flow of kitchenware or tableware in an ongoing warewashing process. A two-compartment sink may be used for warewashing when all of the following are accurate:

(1) The food facility operator has obtained approval from the Department to use the two-compartment sink.

(2) The nature of warewashing is limited to batch operations for cleaning kitchenware (such as between cutting one type of raw meat and another or cleanup at the end of a shift) and the following are accurate:

(i) The number of items to be cleaned is limited.

(ii) The cleaning and sanitizing solutions are made up immediately before use and drained immediately after use.

(iii) Either a detergent-sanitizer is used to sanitize and is applied in accordance with the manufacturer's instructions and as subsection

(e), or a

hot water sanitization immersion step is used as specified in § 10-1207.18(3) (relating to rinsing procedures).

### **Cross References**

This section cited in 7 Pa. Code § 46.612 (relating to manual warewashing; sink compartment requirements); and 7 Pa. Code § 46.731 (relating to sanitization; requirement, frequency and methods).

## **MAINTENANCE AND OPERATION OF UTENSILS AND TEMPERATURE AND PRESSURE MEASURING DEVICES**

### **§10-1206.91. Utensils and temperature and pressure measuring devices: repair and calibration.**

(A) *General requirement of good repair and calibration.* Utensils shall be maintained in a state of repair or condition that complies with the requirements specified in §§ 10-1205.01—10-1205.21, 10-1205.23, 10-1205.41—10-1205.44, 10-1205.61—10-1205.63, 10-1205.81—10-1205.95 or shall be discarded.

(B) *Food temperature measuring devices.* Food temperature measuring devices shall be calibrated in accordance with manufacturer's specifications as necessary to ensure their accuracy.

(C) *Ambient air temperature, water pressure and water temperature measuring devices.* Ambient air temperature, water pressure and water temperature measuring devices shall be maintained in good repair and be accurate within the intended range of use.

### **Cross References**

This section cited in 7 Pa. Code § 46.102 (relating to duties of the persons in charge).

### **§ 10-1206.92. Single-service and single-use articles.**

(A) *Required use.* A food facility without facilities specified in §§ 10-1207.11—10-1207.19 (relating to cleaning of equipment and utensils) for cleaning and sanitizing



kitchenware and tableware shall provide only single-use kitchenware,  
single-service  
articles, single-use articles for use by food employees and single-service  
articles for use by consumers.

(B) *Use limitation.*

(1) Single-service and single-use articles may not be reused.

(2) The bulk milk container dispensing tube shall be cut on the diagonal  
leaving no more than 1 inch protruding from the chilled dispensing head.

**§10-1206.93. Mollusk and crustacean shells used as serving containers.**

Mollusk and crustacean shells may not be used more than once as serving containers.

**CLEANING OF EQUIPMENT AND UTENSILS**

**§ 10-1207.11. Objective of cleaning equipment and utensils.**

(A) *General cleanliness requirement.* Equipment food-contact surfaces and  
utensils shall be clean to sight and touch.

(B) *Grease and soil accumulations.* The food-contact surfaces of cooking  
equipment and pans shall be kept free of encrusted grease deposits and other  
soil  
accumulations.

(C) *Nonfood-contact surfaces.* Nonfood-contact surfaces of equipment shall  
be kept free of an accumulation of dust, dirt, food residue and other debris.

**Cross References**

This section cited in 7 Pa. Code § 46.301 (relating to preventing contamination from  
food contact with equipment and utensils); and 7 Pa. Code § 46.692 (relating to single-  
service and single-use articles).

**§10-1207.12. Frequency of cleaning equipment food-contact surfaces and  
utensils.**

(A) *General requirements.* Equipment food-contact surfaces and utensils shall  
be cleaned as follows:

(1) Except as specified in subsection (b), before each use with a different  
type of raw animal-derived food such as beef, fish, lamb, pork or poultry.

(2) Each time there is a change from working with raw foods to working  
with ready-to-eat foods.

hazardous (3) Between uses with raw fruits and vegetables and with potentially food.

(4) Before using or storing a food temperature measuring device.

(5) At any time during the operation when contamination may have occurred.

(B) *Exception.* Subsection (A)(1) does not apply if the food-contact surface or utensil is in contact with a succession of different raw animal-derived foods each requiring a higher cooking temperature as specified in § 10-1203.61 (relating to cooking raw animal-derived foods) than the previous food (such as preparing raw fish followed by cutting raw poultry on the same cutting board).

(C) *Maximum cleaning interval for equipment food-contact surfaces and utensils in contact with potentially hazardous food.* Except as specified in subsection (D), if used with potentially hazardous food, equipment food-contact surfaces and utensils shall be cleaned throughout the day at least every 4 hours.

hazardous (D) *Exceptions.* Surfaces of utensils and equipment contacting potentially food may be cleaned less frequently than every 4 hours under any of the following circumstances:

food) (1) In storage, containers of potentially hazardous food and their contents are maintained at temperatures specified in 10-1202.01 et seq (relating to and the containers are cleaned when they are empty.

room (2) Utensils and equipment are used to prepare food in a refrigerated or area that is maintained at one of the temperatures in the chart in subparagraph

(i) and both of the following occur:

(i) The utensils and equipment are cleaned at the frequency in the following chart that corresponds to the temperature:

Temperature	Cleaning Frequency
5.0 [deg] C (41 [deg] F) or less	24 hours
> 5.0 [deg] C and <= 7.2 [deg] C ( > 41 [deg] F and <= 45 [deg] F)	20 hours
> 7.2 [deg] C and <= 10 [deg] C ( > 45 [deg] F and <= 50 [deg] F)	16 hours
> 10 [deg] C and <= 12.8 [deg] C ( > 50 [deg] F and <= 55 [deg] F)	10 hours

the (ii) The cleaning frequency based on the ambient temperature of refrigerated room or area is documented in the food facility.

(3) Containers in serving situations such as salad bars, delis and cafeteria lines hold ready-to-eat potentially hazardous food that is maintained at the temperatures specified in §10-1202.01 et seq are intermittently combined with additional supplies of the same food that is at the required temperature, and the containers are emptied and cleaned at least every 24 hours.

(4) Temperature measuring devices are maintained in contact with food, such as when left in a container of deli food or in a roast, held at temperatures specified in §10-1202.01 et seq

(5) Equipment is used for storage of packaged or unpackaged food such as a reach-in refrigerator and the equipment is cleaned at a frequency necessary to preclude accumulation of soil residues.

(6) The cleaning schedule is approved by the Department based on consideration of the following:

(i) Characteristics of the equipment and its use.

(ii) The type of food involved.

(iii) The amount of food residue accumulation.

(iv) The temperature at which the food is maintained during the operation and the potential for the rapid and progressive multiplication of pathogenic or toxigenic microorganisms that are capable of causing foodborne disease.

(7) In-use utensils are intermittently stored in a container of water in which the water is maintained at 58°C (135°F) or more and the utensils and container are cleaned at least every 24 hours or at a frequency necessary to preclude accumulation of soil residues.

(E) *Maximum cleaning interval for equipment food-contact surfaces and utensils in contact with food that is not potentially hazardous.* Except when dry cleaning methods are used as specified in § 10-1207.15(A) (relating to methods of cleaning), surfaces of utensils and equipment contacting food that is not potentially hazardous shall be cleaned as follows:

- (1) At any time when contamination may have occurred.
- (2) At least every 24 hours for iced tea dispensers and consumer selfservice utensils such as tongs, scoops or ladles.
- (3) Before restocking consumer self-service equipment and utensils such as as condiment dispensers and display containers.
- (4) In equipment such as ice bins and beverage dispensing nozzles and enclosed components of equipment such as ice makers, cooking oil storage tanks and distribution lines, beverage and syrup dispensing lines or tubes, coffee bean grinders and water vending equipment as follows:
  - (i) At a frequency specified by the manufacturer.
  - (ii) Absent manufacturer specifications, at a frequency necessary to preclude accumulation of soil or mold.

### **Cross References**

This section cited in 7 Pa. Code § 46.281 (relating to preventing contamination of packaged and unpackaged food: separation, packaging and segregation); 7 Pa. Code § 46.301 (relating to preventing contamination from contact with equipment and utensils); 7 Pa. Code § 46.302 (relating to preventing contamination from food contact with equipment and utensils); 7 Pa. Code § 46.692 (relating to single-service and single-use articles); and 7 Pa. Code § 46.713 (relating to frequency of cleaning, cooking and baking equipment).

### **§10-1207.13. Frequency of cleaning cooking and baking equipment.**

(A) *Food-contact surfaces.* The food-contact surfaces of cooking and baking equipment shall be cleaned at least every 24 hours. This requirement does not apply to hot oil cooking and filtering equipment if it is cleaned as specified in

§10-1207.12(D)(6) (relating to frequency of cleaning equipment food-contact surfaces and utensils).

(B) *Microwave ovens.* The cavities and door seals of microwave ovens shall be cleaned at least every 24 hours by using the manufacturer's recommended cleaning procedure.

### **Cross References**

This section cited in 7 Pa. Code § 46.301 (relating to preventing contamination from food contact with equipment and utensils); and 7 Pa. Code § 46.692 (relating to single-service and single-use articles).

### **§ 10-1207.14. Frequency of cleaning nonfood-contact surfaces.**

Nonfood-contact surfaces of equipment shall be cleaned at a frequency necessary to preclude accumulation of soil residues.

### **Cross References**

This section cited in 7 Pa. Code § 46.301 (relating to preventing contamination from food contact with equipment and utensils); and 7 Pa. Code § 46.692 (relating to single-service and single-use articles).

### **§10-1207.15. Methods of cleaning.**

#### *(A) Dry cleaning.*

vacuuming (1) If used, dry cleaning methods such as brushing, scraping and shall contact only surfaces that are soiled with dry food residues that are not potentially hazardous.

not (2) Cleaning equipment used in dry cleaning food-contact surfaces may be used for any other purpose.

#### *(B) Precleaning.*

(1) Food debris on equipment and utensils shall be scraped over a waste disposal unit or garbage receptacle or may be removed in a warewashing machine with a prewash cycle.

preflushed, (2) If necessary for effective cleaning, utensils and equipment shall be presoaked or scrubbed with abrasives.

#### *(C) Wet cleaning.*

(1) Equipment food-contact surfaces and utensils shall be effectively washed to remove or completely loosen soils by using the manual or mechanical means necessary, such as the application of detergents containing wetting agents and emulsifiers; acid, alkaline or abrasive cleaners; hot water; brushes; scouring pads; high-pressure sprays; or ultrasonic devices.

(2) The washing procedures selected shall be based on the type and purpose of the equipment or utensil, and on the type of soil to be removed.

### **Cross References**

This section cited in 7 Pa. Code § 46.301 (relating to preventing contamination from food contact with equipment and utensils); 7 Pa. Code § 46.692 (relating to single-service and single-use articles); 7 Pa. Code § 46.712 (relating to frequency of cleaning equipment food-contact surfaces and utensils); and 7 Pa. Code § 46.717 (relating to washing procedures for alternative warewashing equipment).

### **§10-1207.16. Washing: loading of soiled items into warewashing machines.**

Soiled items to be cleaned in a warewashing machine shall be loaded into racks, trays or baskets or onto conveyors in a position that exposes the items to the unobstructed spray from all cycles, and allows the items to drain.

### **Cross References**

This section cited in 7 Pa. Code § 46.301 (relating to preventing contamination from food contact with equipment and utensils); and 7 Pa. Code § 46.692 (relating to single-service and single-use articles).

### **§ 10-1207.17. Washing procedures for alternative warewashing equipment.**

If washing in sink compartments or a warewashing machine is impractical (such as when the equipment is fixed or the utensils are too large), washing shall be done by using alternative manual warewashing equipment as specified in § 10-1206.12(C) (relating to manual warewashing: sink compartment requirements) in accordance with the following procedures:

(1) Equipment shall be disassembled as necessary to allow access of the detergent solution to all parts.

(2) Equipment components and utensils shall be scrapped or rough cleaned to remove food particle accumulation.

(3) Equipment and utensils shall be washed as specified in § 10-1207.15(c)(1) (relating to methods of cleaning).

## **Cross References**

This section cited in 7 Pa. Code § 46.301 (relating to preventing contamination from food contact with equipment and utensils); and 7 Pa. Code § 46.692 (relating to single-service and single-use articles).

### **§ 10-1207.18. Rinsing procedures.**

Washed utensils and equipment shall be rinsed so that abrasives are removed and cleaning chemicals are removed or diluted through the use of water or a detergent-sanitizer solution by using one of the following procedures:

- (1) Use of a distinct, separate water rinse after washing and before sanitizing if using any of the following:
  - (i) A three-compartment sink.
  - (ii) Alternative manual warewashing equipment equivalent to a threecompartment sink as specified in § 10-12066.12(c) (relating to manual warewashing: sink compartment requirements).
  - (iii) A three-step washing, rinsing and sanitizing procedure in a warewashing system for CIP equipment.
- (2) Use of a detergent-sanitizer as specified in § 10-1206.76(F) (relating to manual warewashing equipment) if using either of the following:
  - (i) Alternative warewashing equipment as specified in § 10-1206.12(C) that is approved for use with a detergent-sanitizer.
  - (ii) A warewashing system for CIP equipment.
- (3) Use of a nondistinct water rinse that is integrated in the hot water sanitization immersion step of a two-compartment sink operation.
- (4) If using a warewashing machine that does not recycle the sanitizing solution as specified in paragraph (5), or alternative manual warewashing equipment (such as sprayers), use of a nondistinct water rinse that is the following:
  - (i) Integrated in the application of the sanitizing solution.
  - (ii) Wasted immediately after each application.
- (5) If using a warewashing machine that recycles the sanitizing solution for

use in the next wash cycle, use of a nondistinct water rinse that is integrated in the application of the sanitizing solution.

### **Cross References**

This section cited in 7 Pa. Code § 46.301 (relating to preventing contamination from food contact with equipment and utensils); 7 Pa. Code § 46.676 (relating to manual warewashing equipment); and 7 Pa. Code § 46.692 (relating to single-service and single-use articles).

### **§10-1207.19. Washing returnable containers for refilling.**

(A) *General requirement.* Except as specified in subsections (b) and (c), returned empty containers intended for cleaning and refilling with food shall be cleaned and refilled in a regulated food establishment.

(B) *Exception.* A food-specific container for beverages may be refilled at a food facility if all of the following are accurate:

- (1) Only a beverage that is not a potentially hazardous food is used as specified in § 10-1203.07(A) (relating to refilling returnables).
  - (2) The design of the container and of the rinsing equipment and the nature of the beverage, when considered together, allow effective cleaning at home or in the food facility.
  - (3) Facilities for rinsing before refilling returned containers with fresh, hot water that is under pressure and not recirculated are provided as part of the dispensing system.
  - (4) The consumer-owned container returned to the food facility for refilling is refilled for sale or service only to the same consumer.
  - (5) The container is refilled by either of the following:
    - (i) An employee of the food facility.
    - (ii) The owner of the container if the beverage system includes a contamination-free transfer process that cannot be bypassed by the container owner.
- (C) *Exception.* Consumer-owned containers that are not food-specific may be filled at a water vending machine or system.



## Cross References

This section cited in 7 Pa. Code § 46.301 (relating to preventing contamination from food contact with equipment and utensils); 7 Pa. Code § 46.307 (relating to refilling returnables); and 7 Pa. Code § 46.692 (relating to single-service and single-use articles).

## SANITIZATION OF EQUIPMENT AND UTENSILS

### §10-1207.31. Sanitization: requirement, frequency and methods.

(A) *Requirement.* Equipment food-contact surfaces and utensils shall be sanitized in accordance with this section.

(B) *Frequency.* Utensils and food-contact surfaces of equipment shall be sanitized before use after cleaning.

(C) *Methods: hot water and chemical.* After being cleaned, equipment foodcontact surfaces and utensils shall be sanitized by the following methods, based upon the type of operation:

(1) In hot water manual operations: by immersion for at least 30 seconds and as specified in § 10-1206.76(D) (relating to manual warewashing equipment).

(2) In hot water mechanical operations: by being cycled through equipment that is set up as specified in § 10-1206.75(A), (D) and (Ee) (relating to mechanical warewashing equipment) and achieving a utensil surface temperature of 71°C

(160°F) as measured by an irreversible registering temperature indicator.

(3) In chemical manual or mechanical operations: including the application of sanitizing chemicals by immersion, manual swabbing, brushing or pressure spraying methods, using a solution as specified in § 10-1206.74(D) (relating to warewashing equipment: mechanical or manual) for the following exposure time, as applicable:

(i) Except as specified in subparagraph (ii), an exposure time of at least 10 seconds for a chlorine solution specified in § 10-1206.74(D)(1).

50

least 38°C  
(75°F).

sanitizing

efficacy,

- (ii) An exposure time of at least 7 seconds for a chlorine solution of mg/L (ppm) that has a pH of 10 or less and a temperature of at (100°F) or a pH of 8 or less and a temperature of at least 24°C (75°F).
- (iii) An exposure time of at least 30 seconds for other chemical solutions.
- (iv) An exposure time used in relationship with a combination of temperature, concentration and pH that, when evaluated for yields sanitization.

### **Cross References**

This section cited in 7 Pa. Code § 46.281 (relating to preventing contamination of packaged and unpackaged food: separation, packaging and segregation); 7 Pa. Code § 46.301 (relating to preventing contamination from food contact with equipment and utensils); 7 Pa. Code § 46.302 (relating to in-use utensils and between-use storage); 7 Pa. Code § 46.674 (relating to warewashing equipment: mechanical or manual); and 7 Pa. Code § 46.676 (relating to manual warewashing equipment).

## **LAUNDERING**

### **§ 10-1207.51. Requirement and frequency of laundering.**

(A) *Requirement.* Clean linens shall be free from food residues and other soiling matter.

(B) *Frequency of laundering.*

use

raw

to

(1) Linens that do not come in direct contact with food shall be laundered between operations if they become wet, sticky or visibly soiled.

(2) Cloth gloves used as specified in § 10-1203.05(D) (relating to gloves: limitations) shall be laundered before being used with a different type of animal-derived food such as beef, lamb, pork and fish.

(3) Linens and napkins that are used as specified in § 10-1203.03 (relating to linens and napkins: use limitations) and cloth napkins shall be laundered between each use.

(4) Wet wiping cloths shall be laundered daily.

(5) Dry wiping cloths shall be laundered as necessary to prevent contamination of food and clean serving utensils.

### **Cross References**

This section cited in 7 Pa. Code § 46.304 (relating to wiping cloths: use limitations).

### **§10-1207.52. Methods of laundering.**

(A) *Storage of soiled linens.* Soiled linens shall be kept in clean, nonabsorbent receptacles or clean, washable laundry bags and stored and transported to prevent contamination of food, clean equipment, clean utensils and single-service and single-use articles.

(B) *Mechanical washing.* All linens shall be mechanically washed, except in food facilities where only wiping cloths are laundered as specified in § 10-1206.15(B) (relating to clothes washers and dryers), the wiping cloths may be laundered in a mechanical washer, sink designated only for laundering wiping cloths or a warewashing or food preparation sink that is cleaned as specified in § 10-1206.74(A) (relating to warewashing equipment: mechanical or manual).

### **§10-1207.53. Use of laundry facilities.**

(A) *General requirement.* Except as specified in subsection (b), laundry facilities on the premises of a food facility shall be used only for the washing and drying of items used in the operation of the facility.

(B) *Exception.* Separate laundry facilities located on the premises for the purpose of general laundering (such as for institutions providing boarding and lodging) may also be used for laundering food facility items.

## **PROTECTION OF CLEAN ITEMS**

### **§ 10-1207.71. Drying clean equipment and utensils.**

(A) *Air-drying or adequate draining required.* After cleaning and sanitizing, equipment and utensils shall be air-dried or used after adequate draining as specified in 21 CFR 178.1010(a) (relating to sanitizing solutions) before contact with food.

(B) *Cloth drying.* After cleaning and sanitizing, equipment and utensils may

not be cloth-dried, except that utensils that have been air-dried may be polished with cloths that are maintained clean and dry.

#### **§10-1207.72. Wiping cloths: air-drying locations.**

(A) *General.* Except as provided in subsection (B), wiping cloths laundered in a food facility that does not have a mechanical clothes dryer as specified in § 10-1206.15(B) (relating to clothes washers and dryers) shall be air-dried in a location

and in a manner that prevents contamination of food, equipment, utensils, linens, single-service and single-use articles and wiping cloths.

(B) *Exception.* This section does not apply if wiping cloths are stored after laundering in a sanitizing solution as specified in § 10-1206.74(D) (relating to warewashing equipment: mechanical or manual).

#### **Cross References**

This section cited in 7 Pa. Code § 46.615 (relating to clothes washer and dryers).

#### **§10-1207.73. Lubricating and reassembling clean food-contact surfaces and equipment.**

(A) *Food-contact surfaces.* Lubricants shall be applied to food-contact surfaces that require lubrication in a manner that does not contaminate food-contact surfaces.

(B) *Equipment.* Equipment shall be reassembled so that food-contact surfaces are not contaminated.

#### **§10-1207.74. Storing clean items.**

(A) *General requirement for equipment, utensils, linens and single-service and single-use articles.* Except as specified in subsection (d), cleaned equipment and utensils, laundered linens and single-service and single-use articles shall be stored as follows:

(1) In a clean, dry location.

(2) Where they are not exposed to splash, dust or other contamination.

(3) At least 15 cm (6 inches) above the floor.

(B) *Additional storage requirements for equipment and utensils.* Clean equipment and utensils shall be stored as specified in subsection (a) and shall be stored covered or inverted, and in a self-draining position that allows air drying.

(C) *Additional storage requirements for single-service and single-use articles.* Single-service and single-use articles shall be stored as specified in subsection

(a)

and shall be kept in the original protective package or stored by using other means that afford protection from contamination until used.

(D) *Items in closed packages.* Items that are kept in closed packages may be stored less than 15 cm (6 inches) above the floor on dollies, pallets, racks and skids that are designed as specified in § 46.595 (relating to case lot handling equipment: moveability).

(E) *Prohibited storage locations.* Except as specified in subsection (f), cleaned and sanitized equipment, utensils, laundered linens and single-service and  
single-use articles may not be stored in any of the following locations:

(1) A locker room.

(2) A toilet room.

(3) A garbage room.

(4) A mechanical room.

(5) Under a sewer line that is not shielded to intercept potential  
drips.

(6) Under a leaking water line—including a leaking automatic fire  
sprinkler head—or under a line on which water has  
condensed.

(7) Under an open stairwell.

(8) Under another source of contamination.

(F) *Limited exception for a locker room.* Laundered linens and single-  
service and single-use articles that are packaged or in a facility such as a cabinet  
may be stored in a locker room.

## **§ 10-1207.75. Handling clean items.**

(A) *Kitchenware and tableware.*

utensils  
and  
(1) Single-service and single-use articles and cleaned and sanitized shall be handled, displayed and dispensed so that contamination of food-lip-contact surfaces is prevented.

so  
consumer  
(2) Knives, forks and spoons that are not prewrapped shall be presented that only the handles are touched by employees and by consumers if self-service is provided.

service  
(3) Except as specified in paragraph (2), single-service articles that are intended for food- or lip-contact shall be furnished for consumer self-service with the original individual wrapper intact or from an approved dispenser.

contamination  
(B) *Preset tableware*. If tableware is preset, it shall be protected from by being wrapped, covered or inverted. Exposed, unused settings shall be either removed when a consumer is seated, or cleaned and sanitized before further use if the settings are not removed when a consumer is seated.

consumer  
(C) *Soiled and clean tableware*. Soiled tableware shall be removed from eating and drinking areas and handled so that clean tableware is not contaminated.

## **WATER, PLUMBING AND WASTE WATER**

### **WATER**

#### **§ 10-1208.01. Sources of drinking water.**

Drinking water shall be obtained from an approved source that is either of the following:

- (1) A public water system.
- (2) A nonpublic water system that is constructed, maintained and operated in accordance with 25 Pa. Code Chapter 109 (relating to safe drinking water). For the purpose of approval of a nonpublic water system that serves a food facility, a nonpublic water system shall be required to conform to the construction, maintenance and operation requirements established for a transient noncommunity water system as defined in 25 Pa. Code Chapter 109.

### **Cross References**

This section cited in 7 Pa. Code § 46.806 (relating to distribution, delivery and retention of water).

### **§ 10-1208.02. Drinking water system flushing and disinfection.**

A drinking water system shall be flushed and disinfected before being placed in service after construction, repair or modification and after an emergency situation, such as a flood, that may introduce contaminants to the system. A food facility shall obtain verification that the water meets the quality standards for public drinking water established in 25 Pa. Code Chapter 109 (relating to safe drinking water) before placing a drinking water system in service, and shall retain that verification and provide it to the Department upon request.

### **Cross References**

This section cited in 7 Pa. Code § 46.806 (relating to distribution, delivery and retention of water).

### **§ 10-1208.03. Bottled drinking water.**

Bottled drinking water used or sold in a food facility shall be obtained from approved sources in accordance with 25 Pa. Code Chapter 109 (relating to safe drinking water)

### **Cross References**

This section cited in 7 Pa. Code § 46.806 (relating to distribution, delivery and retention of water).

### **§ 10-1208.04. Quality of water.**

(A) *Standards for drinking water.* Except as specified in subsection (b), water obtained from either a public water system or a nonpublic water system for use in a food facility shall meet the quality standards for public drinking water established in 25 Pa. Code Chapter 109 (relating to safe drinking water).

(B) *Nondrinking water.*

(1) A nondrinking water supply shall be used only if approved by the Department.

(2) Nondrinking water shall be used only for nonculinary purposes such as air conditioning, nonfood equipment cooling, fire protection and irrigation.

(C) *Sampling of water from nonpublic water systems.* Except when used as nondrinking water as specified in subsection (B), water from a nonpublic water system shall be sampled and tested for contamination at the same frequency and

for the same contaminants as established in 25 Pa. Code Chapter 109 for a transient noncommunity public water system that serves 25 people daily. All analytical work must be performed in accordance with 25 Pa. Code Chapter 109.

*(D) Sample report for nonpublic water system to be retained at food facility.*

If a food facility receives all of its drinking water from a nonpublic water system, the results from all required self-monitoring samples collected during the previous 12 months or, if less frequent than annual monitoring is approved by the Department for the facility, the most recent sample report for the nonpublic water system shall be retained on file in the food facility. Food facilities that use a Department of Environmental Protection approved self-contained public water system shall maintain test result records in accordance with 25 Pa. Code Chapter 109.

**Cross References**

This section cited in 7 Pa. Code § 46.806 (relating to distribution, delivery and retention of water).

**§ 10-1208.05. Quantity and availability of water: capacity and pressure.**

*(A) Capacity.*

(1) The water source and system shall be of sufficient capacity to meet the peak water demands of the food facility.

(2) Hot water generation and distribution systems shall be sufficient to meet the peak hot water demands throughout the food facility.

*(B) Pressure.* Water under pressure shall be provided to all fixtures, equipment and nonfood equipment that are required to use water. However, water supplied as specified in § 10-1208.06(B)(1) and (2) (relating to distribution, delivery and retention of water) to a temporary food facility or in response to a temporary interruption of a water supply need not be under pressure.

**Cross References**

This section cited in 7 Pa. Code § 46.806 (relating to distribution, delivery and retention of water).

**§ 10-1208.06. Distribution, delivery and retention of water.**

*(A) Delivery system.* Water shall be received from the source through the use of one or more of the following:

(1) A properly constructed and maintained service connection or lateral



from a public water system that is approved by the Department of Environmental Protection in accordance with 25 Pa. Code Chapter 109 (relating to safe drinking water).

(2) One or more of the following that shall be constructed, maintained and operated in accordance with 25 Pa. Code Chapter 109:

and (i) Nonpublic water main, water pumps, pipes, hoses, connections  
other appurtenances.

(ii) Water transport vehicles.

(iii) Water containers.

(B) *Alternative water supply.* Water meeting the applicable requirements in §§ 10-1208.01—10-1208.05 and subsection (A) shall be made available for a mobile food facility, for a temporary food facility without a permanent water supply and for a food facility with a temporary interruption of its water supply through one or more of the following sources:

(1) A supply of containers of commercially bottled drinking water.

(2) One or more closed portable water containers.

(3) An enclosed vehicular water tank.

(4) An on-premises water storage tank.

(5) Piping, tubing or hoses connected to an adjacent approved source.

### **Cross References**

This section cited in 7 Pa. Code § 46.805 (relating to quantity and availability of water: capacity and pressure).

### **PLUMBING SYSTEM**

#### **§ 10-1208.21. Approved materials to be used in plumbing systems.**

(A) *Approved materials required.* A plumbing system and hoses conveying water shall be constructed and repaired with approved materials according to Chapter 3 of the Pennsylvania Construction Code Act (35 P. S. §§ 7210.301—7210.304).

(B) *Safe materials for water filters.* A water filter shall be made of safe materials.

**§ 10-1208.22. Design, construction and installation of plumbing systems.**

(A) *Approved system and cleanable fixtures.*

according (1) A plumbing system shall be designed, constructed and installed to Chapter 3 of the Pennsylvania Construction Code Act (35 P. S. §§ 7210.301—7210.304).

(2) A plumbing fixture such as a handwashing facility, toilet or urinal shall be easily cleanable.

(B) *Handwashing facility: installation.*

temperature (1) A handwashing sink shall be equipped to provide water at a of at least 38°C (100°F) through a mixing valve or combination faucet.

(2) A steam mixing valve may not be used at a handwashing sink.

(3) A self-closing, slow-closing or metering faucet shall provide a flow of water for at least 15 seconds without the need to reactivate the faucet.

(4) An automatic handwashing facility shall be installed in accordance with manufacturer's instructions.

(C) *Air gap requirement for backflow prevention.* An air gap between the water supply inlet and the flood level rim of the plumbing fixture, equipment or nonfood equipment shall be at least twice the diameter of the water supply inlet and may not be less than 25 mm (1 inch).

(D) *Design standard for backflow prevention device.* A backflow or backsiphonage prevention device installed on a water supply system shall meet American Society of Sanitary Engineering standards for construction, installation, maintenance, inspection and testing for that specific application and type of device.

(E) *Design of conditioning device.* A water filter, screen and other water conditioning device installed on water lines shall be designed to facilitate disassembly for periodic servicing and cleaning. A water filter element shall be of the replaceable type.

## Cross References

This section cited in 7 Pa. Code § 46.131 (relating to cleanliness of hands and exposed portions of arms); and 7 Pa. Code § 46.823 (relating to numbers and capacities of plumbing facilities).

### § 10-1208.23. Numbers and capacities of plumbing facilities.

(A) *Handwashing facilities for employees and consumers.*

handwashing  
use  
and

(1) Except as specified in paragraphs (2) and (3), at least one sink—and a number of handwashing sinks necessary for their convenient use by employees in areas specified in § 10-1208.24(A) (relating to location placement Of plumbing facilities)—shall be provided.

has at

(2) If approved by the Department and capable of removing the types of soils encountered in the food operations involved, automatic handwashing facilities may be substituted for handwashing sinks in a food facility that least one handwashing sink.

prepackaged  
facilities  
required  
preparation, food  
areas.

(3) If approved by the Department, when food exposure is limited to foods and handwashing sinks are not conveniently available, such as in some temporary food facilities or at some vending machine locations, employees may use chemically treated towelettes for handwashing.

(4) At least one handwashing sink and a number of handwashing sinks necessary for the convenient use by consumers shall be provided in food facilities which allow consumption of food on the food facility premises. Handwash sinks for consumers shall be located in easily accessible areas and as required in § 10-1208.24(A)(2), but may not require access through food preparation, food dispensing, food, equipment and utensil storage areas, or warewashing areas.

(B) *Toilets and urinals.* At least one toilet and not fewer than the toilets (and urinals, if used) required by the Department of Labor and Industry shall be provided.

(C) *Utility sink.* At least one utility sink or one curbed cleaning facility equipped with a floor drain shall be provided and conveniently located for the cleaning of mops or similar wet floor cleaning tools and for the disposal of mop

water and similar liquid waste.

(D) *Backflow prevention device: when required.* A plumbing system shall be installed to preclude backflow of a solid, liquid or gas contaminant into the water supply system at each point of use at the food facility, including on a hose bib if a hose is attached, or on a hose bib if a hose is not attached but can be attached,  
by an approved backflow prevention device as specified in § 46.822(d) (relating to design, construction and installation of plumbing systems).

(E) *Backflow prevention device on carbonators.* If not provided with an air gap as specified in § 10-1208.22(Cc), a double check valve with an intermediate vent  
preceded by a screen of not less than 100 mesh to 25.4mm (100 mesh to 1 inch) shall be installed upstream from a carbonating device and downstream from any copper in the water supply line. A single or double check valve attached to the carbonator need not be of the vented type if an air gap or vented backflow prevention  
device has been otherwise provided.

### **Cross References**

This section cited in 7 Pa. Code § 46.941 (relating to handwashing facilities: numbers and capacities); 7 Pa. Code § 46.942 (relating to toilets and urinals: numbers and capacities); and 7 Pa. Code § 46.946 (relating to utility sinks).

### **§ 10-1208.24. Location and placement of plumbing facilities.**

(A) *Handwashing facilities.* A handwashing facility shall be located as follows:

- (1) In food preparation, food dispensing and warewashing areas to allow convenient use by employees.
- (2) In, or immediately adjacent to, toilet rooms.

(B) *Location of backflow prevention device.* A backflow prevention device shall be located so that it can be serviced and maintained.

(C) *Location of conditioning device.* A water filter, screen and other waterconditioning  
device installed on water lines shall be located to facilitate disassembly for periodic servicing and cleaning.

### **Cross References**

This section cited in 7 Pa. Code § 46.823 (relating to numbers and capacities of plumbing facilities); and 7 Pa. Code § 46.961 (relating to handwashing facilities: located for convenience).

**§ 10-1208.25. Operation and maintenance of plumbing facilities.**

*(A) Using a handwashing facility.*

(1) A handwashing facility shall be maintained so that it is accessible at all times for employee use.

(2) A handwashing facility may not be used for purposes other than handwashing.

(3) An automatic handwashing facility shall be used in accordance with manufacturer's instructions.

*(B) Cross connection prohibited.*

(1) Except for firefighting, a person may not create a cross connection by connecting a pipe or conduit between the drinking water system and a nondrinking water system or a water system of unknown quality.

(2) The piping of a nondrinking water system shall be durably identified so that it is readily distinguishable from piping that carries drinking water.

*(C) Scheduling inspection and service for a water system device.* A device such as a water treatment device or backflow preventer shall be scheduled for inspection and service, in accordance with manufacturer's instructions and as necessary to prevent device failure based on local water conditions, and records demonstrating inspection and service shall be maintained by the person in charge.

*(D) Cleaning the water reservoir of water devices such as fogging devices.*

(1) A reservoir that is used to supply water to a device such as a produce fogger shall be both of the following:

(i) Maintained in accordance with manufacturer's specifications.

(ii) Cleaned in accordance with manufacturer's specifications or according to the procedures specified in paragraph (2), whichever is more stringent.

(2) Cleaning procedures shall include at least the following steps and shall be conducted at least once a week:

contact	(i) Draining and complete disassembly of the water and aerosol parts.
nozzles	(ii) Brush-cleaning the reservoir, aerosol tubing and discharge with a suitable detergent solution.
detergent	(iii) Flushing the complete system with water to remove the solution and particulate accumulation.
aerosol	(iv) Rinsing by immersing, spraying or swabbing the reservoir, tubing and discharge nozzles with at least 50 mg/L (ppm) hypochlorite solution.

(E) *System maintained in good repair.* A plumbing system shall be repaired according to Chapter 3 of the Pennsylvania Construction Code Act (35 P. S. §§ 7210.301—7210.304), and shall be maintained in good repair.

### **Cross References**

This section cited in 7 Pa. Code § 46.981 (relating to premises, structures, attachments and fixtures: methods).

## **WATER TANK AND MOBILE FOOD FACILITY WATER TANK**

### **§ 10-1208.41. Materials used in construction of water tanks and mobile food facility water tanks.**

Materials that are used in the construction of a water tank, mobile food facility water tank and appurtenances shall be all of the following:

- (1) Safe materials.
- (2) Durable, corrosion-resistant and nonabsorbent.
- (3) Finished to have a smooth, easily cleanable surface.

### **§ 10-1208.42. Design and construction of water tanks and mobile food facility water tanks.**

(A) *Requirement: enclosed system sloped to drain.* A water tank shall be the following:

- (1) Enclosed from the filling inlet to the discharge outlet.
- (2) Sloped to an outlet that allows complete drainage of the tank.

(B) *Requirement: inspection and cleaning port protected and secured.* If a water tank is designed with an access port for inspection and cleaning, the opening

shall be in the top of the tank and both of the following:

(1) Flanged upward at least 13 mm (1/2 inch).

(2) Equipped with a port cover assembly that is both of the following:

(i) Provided with a gasket and a device for securing the cover in place.

(ii) Flanged to overlap the opening and sloped to drain.

(C) *“V” type threads: use limitation.* A fitting with “V” type threads on a water tank inlet or outlet shall be allowed only when a hose is permanently attached.

(D) *Requirement: tank vent protected.* If provided, a water tank vent shall terminate

in a downward direction and shall be covered with the following, as applicable:

(1) 16 mesh to 25.4 mm (16 mesh to 1 inch) screen or equivalent when the vent is in a protected area.

(2) A protective filter when the vent is in an area that is not protected from windblown dirt and debris.

(E) *Requirement: inlet and outlet sloped to drain.* A water tank and its inlet and outlet shall be sloped to drain, and a water tank inlet shall be positioned so that it is protected from contaminants such as waste discharge, road dust, oil or grease.

(F) *Hose: construction and identification.* A hose used for conveying drinking water from a water tank shall be all of the following:

(1) Constructed of safe materials.

(2) Durable, corrosion-resistant and nonabsorbent.

(3) Resistant to pitting, chipping, crazing, scratching, scoring, distortion and decomposition.

(4) Finished with a smooth interior surface.

(5) Clearly and durably identified as to its use if not permanently attached.

**§ 10-1208.43. Numbers and capacities of water tanks and mobile food facility water tanks.**

(A) *Filter requirement where compressed air pressurizes the water tank system.* A filter that does not pass oil or oil vapors shall be installed in the air supply line between the compressor and drinking water system when compressed air is used to pressurize the water tank system.

(B) *Protective cover or device.* A cap and keeper chain, closed cabinet, closed storage tube or other approved protective cover or device shall be provided for a water inlet, outlet and hose.

(C) *Mobile food facility tank inlet.* A mobile food facility's water tank inlet shall be both of the following:

(1) 19.1 mm (3/4 inch) in inner diameter or less.

(2) Provided with a hose connection of a size or type that will prevent its use for any other service.

**Cross References**

This section cited in 7 Pa. Code § 46.844 (relating to operation and maintenance of water tanks and mobile food facility water tanks).

**§ 10-1208.44. Operation and maintenance of water tanks and mobile food facility water tanks.**

(A) *System flushing and disinfection.* A water tank, pump and hoses shall be flushed and sanitized before being placed in service after construction, repair, modification and periods of nonuse.

(B) *Preventing backflow while using a pump and hoses.* A person shall operate a water tank, pump and hoses so as to prevent backflow and other contamination of the water supply.

(C) *Protecting inlet, outlet and hose fitting.* If not in use, a water tank and hose inlet and outlet fitting shall be protected using a cover or device as specified in § 10-1208.43(B) (relating to numbers and capacities of water tanks and mobile food facility water tanks).

(D) *Tank, pump and hoses, dedication.* A water tank, pump and hoses used for



conveying drinking water shall be used for no other purpose, except that water tanks, pumps and hoses approved for liquid foods may be used for conveying drinking water if they are cleaned and sanitized before they are used to convey water.

## **SEWAGE, OTHER LIQUID WASTE AND RAINWATER**

### **§ 10-1208.61. Capacity and drainage of a sewage holding tank in a mobile food facility.**

A sewage holding tank in a mobile food facility shall be both of the following:

- (1) Sized 15% larger in capacity than the water supply tank.
- (2) Sloped to a drain that is 25 mm (1 inch) in inner diameter or greater, equipped with a shut-off valve.

### **§ 10-1208.62. Retention, drainage and delivery of sewage, other liquid waste and rainwater.**

(A) *Facility drainage system.* Food facility drainage systems, including grease traps, that convey sewage shall be designed and installed as specified in § 10-1208.22(A) (relating to design, construction and installation of plumbing systems).

(B) *Backflow prevention.*

(1) Except as specified in paragraphs (2) and (3), a direct connection may not exist between the sewage system and a drain originating from equipment in which food, portable equipment or utensils are placed.

(2) If allowed under Chapter 3 of the Pennsylvania Construction Code Act (35 P. S. §§ 7210.301—7210.304), a warewashing machine may have a direct connection between its waste outlet and a floor drain when the machine is located within 1.5 m (5 feet) of a trapped floor drain and the machine outlet is connected to the inlet side of a properly vented floor drain trap.

(3) If allowed under Chapter 3 of the Pennsylvania Construction Code Act, a warewashing or culinary sink may have a direct connection.

(C) *Grease trap.* If used, a grease trap shall be located to be easily accessible for cleaning.

(D) *Conveying sewage.* Sewage shall be conveyed to the point of disposal through an approved sanitary sewage system or other system, including use of

sewage transport vehicles, waste retention tanks, pumps, pipes, hoses and connections that are constructed, maintained and operated according to Chapter 3 of the Pennsylvania Construction Code Act and section 7 of the Pennsylvania Sewage Facilities Act (35 P. S. § 750.7).

(E) *Removing mobile food facility wastes.* Sewage and other liquid wastes shall be removed from a mobile food facility at an approved waste servicing area or by a sewage transport vehicle in a way so that a public health hazard or nuisance is not created.

(F) *Flushing a waste retention tank.* A tank for liquid waste retention shall be thoroughly flushed and drained in a sanitary manner during the servicing operation.

### **Cross References**

This section cited in 7 Pa. Code § 46.884 (relating to operation and maintenance of storage areas, redeeming machines, receptacles and waste handling units).

### **§ 10-1208.63. Disposal of sewage and nonsewage.**

(A) *Disposal of sewage.* Sewage shall be disposed through an approved facility that is either of the following:

- (1) A public sewage treatment plant.
- (2) An individual sewage disposal system that is sized, constructed, maintained, and operated according to section 7 of the Pennsylvania Sewage Facilities Act (35 P. S. § 750.7)

(B) *Other liquid wastes and rainwater.* Condensate drainage and other nonsewage liquids and rainwater shall be drained from point of discharge to disposal according to Chapter 3 of the Pennsylvania Construction Code Act (35 P. S. §§ 7210.301—7210.304).

### **REFUSE, RECYCLABLES AND RETURNABLES**

**§ 10-1208.81. Storage areas and receptacles for refuse, recyclables and returnables:**  
**materials, design, construction and installation.**

(A) *Indoor storage area.* If located within the food facility, a storage area for refuse, recyclables and returnables shall meet the requirements specified in

§§ 10-1209.01, 10-1209.21 and 10-1209.22(E) and (F) (relating to indoor areas of food facilities: surface characteristics; cleanability of floors, walls and ceilings; and functionality of various physical facilities of a food facility).

(B) *Outdoor storage surface.* An outdoor storage surface for refuse, recyclables and returnables shall be constructed of nonabsorbent material such as concrete or asphalt and shall be smooth, durable and sloped to drain.

(C) *Outdoor enclosure.* If used, an outdoor enclosure for refuse, recyclables and returnables shall be constructed of durable and cleanable materials.

(D) *Receptacles.* Receptacles and waste handling units for refuse, recyclables and returnables and for use with materials containing food residue shall be durable, cleanable, insect- and rodent-resistant, leakproof and nonabsorbent.

Plastic

bags and wet strength paper bags may be used to line receptacles for storage inside the food facility, or within closed outside receptacles.

(E) *Receptacles in vending machines.* A refuse receptacle may not be located within a vending machine, except that a receptacle for beverage bottle crown closures may be located within a vending machine.

(F) *Outside receptacles.*

(1) Receptacles and waste handling units for refuse, recyclables and returnables used with materials containing food residue and used outside the food facility shall be designed and constructed to have tight-fitting lids, doors or covers.

(2) Receptacles and waste handling units for refuse and recyclables such as an onsite compactor shall be installed so that accumulation of debris and insect and rodent attraction and harborage are minimized and effective cleaning is facilitated around and, if the unit is not installed flush with the base pad, under the unit.

### **Cross References**

This section cited in 7 Pa. Code § 46.884 (relating to operation and maintenance of storage areas, redeeming machines, receptacles and waste handling units); and 7 Pa. Code § 46.902 (relating to

outdoor areas of food facilities: surface characteristics).

**§10-1208.82. Storage areas and receptacles for refuse, recyclables and returnables: numbers and capacities.**

(A) *Storage areas, rooms and receptacles: capacity and availability.*

enclosure, (1) An inside storage room and area and outside storage area and receptacles shall be of sufficient capacity to hold refuse, recyclables and returnables that accumulate.

premises (2) A receptacle shall be provided in each area of the food facility or where refuse is generated or commonly discarded, or where recyclables or returnables are placed.

receptacle (3) If disposable towels are used at handwashing sinks, a waste shall be located at each sink or group of adjacent sinks.

(B) *Toilet room receptacle for sanitary napkins.* A toilet room used by females shall be provided with a covered receptacle for sanitary napkins.

supplies (C) *Cleaning implements and supplies.* Suitable cleaning implements and

provided (such as high-pressure pumps, hot water, steam and detergent) shall be

as necessary for effective cleaning of receptacles and waste handling units for refuse, recyclables and returnables, except that approved off-premises-based cleaning services may be used if on-premises cleaning implements and supplies are not provided.

**Cross References**

This section cited in 7 Pa. Code § 46.941 (relating to handwashing facilities: numbers and capacities).

**§ 10-1208.83. Location of storage areas, redeeming machines, receptacles and waste handling units.**

(A) *General requirement.* An area designated for refuse, recyclables, returnables and—except as specified in subsection (B)—a redeeming machine for recyclables or returnables shall be located so that it is separate from food, equipment,

utensils, linens and single-service and single-use articles and a public health hazard or nuisance is not created.

(B) *Exception for redeeming machine.* A redeeming machine may be located in the packaged food storage area or consumer area of a food facility if food, equipment, utensils, linens and single-service and single-use articles are not subject to contamination from the machines and a public health hazard or nuisance is not created.

(C) *Receptacles.* The location of receptacles and waste handling units for refuse, recyclables and returnables may not create a public health hazard or nuisance or interfere with the cleaning of adjacent space.

### **Cross References**

This section cited in 7 Pa. Code § 46.965 (relating to refuse, recyclables and returnables: receptacles, waste handling units and designated storage areas).

### **§ 10-1208.84. Operation and maintenance of storage areas, redeeming machines, receptacles and waste handling units.**

(A) *Storing refuse, recyclables and returnables.* Refuse, recyclables and returnables shall be stored in receptacles or waste handling units so that they are inaccessible to insects and rodents.

(B) *Keeping areas, enclosures and receptacles in good repair.* Storage areas, enclosures and receptacles for refuse, recyclables and returnables shall be maintained in good repair.

(C) *Outside storage prohibitions.*

(1) Except as specified in paragraph (2), refuse receptacles not meeting the requirements specified in § 10-1208.81(D) (relating to storage areas and receptacles for refuse, recyclables and returnables: materials, design, construction and installation), (such as receptacles that are not rodent-resistant, unprotected plastic bags and paper bags, or baled units that contain materials with food residue), may not be stored outside.

(2) Cardboard or other packaging material that does not contain food residues and that is awaiting regularly scheduled delivery to a recycling or disposal

stored site may be stored outside without being in a covered receptacle if it is stored so that it does not create a rodent harborage problem.

(D) *Covering receptacles.* Receptacles and waste handling units for refuse, recyclables and returnables shall be kept covered as follows:

(1) Inside the food facility if the receptacles and units are filled or contain food residue and are not in continuous use.

(2) With tight-fitting lids or doors if kept outside the food facility.

(E) *Using drain plugs.* Drains in receptacles and waste handling units for refuse, recyclables and returnables shall have drain plugs in place.

and (F) *Maintaining refuse areas and enclosures.* A storage area and enclosure for refuse, recyclables or returnables shall be maintained free of unnecessary items, as specified in § 10-1209.81(N) (relating to premises, structures, attachments and fixtures: methods), and clean.

(G) *Cleaning receptacles.*

returnables (1) Receptacles and waste handling units for refuse, recyclables and returnables shall be thoroughly cleaned in a way that does not contaminate food, equipment, utensils, linens or single-service and single-use articles, and waste water shall be disposed of as specified in § 10-1208.62(E) (relating to retention, drainage and delivery of sewage, other liquid waste and rainwater).

from (2) Soiled receptacles and waste handling units for refuse, recyclables and returnables shall be cleaned at a frequency necessary to prevent them from developing a buildup of soil or becoming attractants for insects and rodents.

#### **§ 10-1208.85. Removal of refuse, recyclable and returnables.**

(A) *Frequency.* Refuse, recyclables and returnables shall be removed from the premises at a frequency that will minimize the development of objectionable odors and other conditions that attract or harbor insects and rodents.

(B) *Receptacles or vehicles.* Refuse, recyclables and returnables shall be removed from the premises by way of either of the following:

(1) Portable receptacles adequately constructed and maintained to contain the refuse, recyclables or returnables placed therein.

(2) A transport vehicle adequately constructed and maintained to contain the refuse, recyclables or returnables transported therein.

**§ 10-1208.86. Facilities for disposal and recycling refuse, recyclables and returnables.**

Solid waste not disposed of through the sewage system such as through grinders and pulpers shall be recycled or disposed of in an approved public or private community recycling or refuse facility or solid waste shall be disposed of in an individual refuse facility such as a lawfully-operated landfill or incinerator.

**PHYSICAL FACILITIES MATERIALS FOR CONSTRUCTION AND REPAIR  
MATERIALS FOR CONSTRUCTION AND REPAIR**

**§10-1209.01. Indoor areas of food facilities: surface characteristics.**

(A) *General requirement.* Except as specified in subsection (b), materials for indoor floor, wall and ceiling surfaces of a food facility under conditions of normal use shall be all of the following:

(1) Smooth, durable and easily cleanable for areas where food facility operations are conducted.

(2) Closely woven and easily cleanable carpet for carpeted areas.

(3) Nonabsorbent for areas subject to moisture such as food preparation areas, walk-in refrigerators, warewashing areas, toilet rooms, mobile food servicing areas and areas subject to flushing or spray cleaning methods.

facility

(B) *Exception for a temporary food facility.*

(1) If graded to drain, a floor in a temporary food facility may be concrete, machine-laid asphalt, or dirt or gravel if it is covered with mats, removable platforms, duckboards or other suitable approved materials that are effectively treated to control dust and mud.

(2) Walls and ceilings in a temporary food facility shall be constructed of a material that protects the interior from the weather and windblown dust and debris.

**Cross References**

This section cited in 7 Pa. Code § 46.881 (relating to storage areas and receptacles for refuse,

recyclables and returnables: materials, design, construction and installation).

#### **§10-1209.02 Outdoor areas of food facilities: surface characteristics.**

(A) *Walking and driving areas.* The outdoor walking and driving areas of a food facility shall be surfaced with concrete, asphalt, gravel or other materials that have been effectively treated to minimize dust, facilitate maintenance and prevent muddy conditions.

(B) *Exterior surfaces.* Exterior surfaces of food facility buildings and mobile food facilities shall be of weather-resistant materials and shall comply with Chapter 3 of the Pennsylvania Construction Code Act (35 P. S. §§ 7210.301—7210.304).

(C) *Certain outdoor storage areas.* Outdoor storage areas of a food facility used for storing refuse, recyclables or returnables shall be of materials specified in § 10-1208.81(B) and (C) (relating to storage areas and receptacles for refuse, recyclables and returnables: materials, design, construction and installation).

### **DESIGN, CONSTRUCTION AND INSTALLATION**

#### **§ 10-1209.21. Cleanability of floors, walls and ceilings.**

(A) *General requirement.* Except as specified in subsection (d), the floors, floor coverings, walls, wall coverings and ceilings of a food facility shall be designed, constructed and installed so they are smooth and easily cleanable, except that antislip floor coverings or applications may be used for safety reasons.

(B) *Utility lines.*

(1) Utility service lines and pipes in a food facility may not be unnecessarily exposed.

(2) Exposed utility service lines and pipes in a food facility shall be installed so they do not obstruct or prevent cleaning of the floors, walls or ceilings.

(3) Exposed horizontal utility service lines and pipes in a food facility may not be installed on the floor.

(C) *Floor and wall junctures: coved and enclosed or sealed.*

(1) In food facilities in which cleaning methods other than water flushing



and are used for cleaning floors, the floor and wall junctures shall be coved closed to no larger than 1 mm (1/32 inch).

(2) The floors in food facilities in which water flush cleaning methods are used shall be provided with drains and be graded to drain, and the floor and wall junctures shall be coved and sealed.

*(D) Floor carpeting: limitations and installation.*

(1) A floor covering such as carpeting or similar material may not be installed as a floor covering in food preparation areas, walk-in refrigerators, warewashing areas, toilet room areas where handwashing sinks, toilets and urinals are located, refuse storage rooms or other areas where the floor is subject to moisture, flushing or spray cleaning methods.

(2) If carpeting is installed as a floor covering in areas other than those specified in paragraph (1), it shall be both of the following:

(i) Securely attached to the floor with a durable mastic by using a stretch and tack method, or by another method.

(ii) Installed tightly against the wall under the coving or installed away from the wall with a space between the carpet and the wall and with the edges of the carpet secured by metal stripping or some other means.

*(E) Floor covering: mats and duckboards.* Mats and duckboards in a food facility shall be designed to be removable and easily cleanable.

*(F) Wall and ceiling coverings and coatings.*

(1) Wall and ceiling covering materials in a food facility shall be attached so that they are easily cleanable.

(2) Except in areas used only for dry storage, concrete, porous blocks or bricks used for indoor wall construction in a food facility shall be finished and sealed to provide a smooth, nonabsorbent, easily cleanable surface.

*(G) Attachments to walls and ceilings.* Attachments to walls and ceilings

(such as light fixtures, mechanical room ventilation system components, vent covers, wall mounted fans, decorative items and other attachments) in a food facility shall be easily cleanable, except that in a consumer area of a food facility, wall and ceiling surfaces and decorative items and attachments that are provided for ambiance need not meet this requirement if they are kept clean.

(H) *Studs, joists and rafters in walls and ceilings.* Studs, joists and rafters in a food facility may not be exposed in areas subject to moisture. This requirement does not apply to temporary food facilities.

### **Cross References**

This section cited in 7 Pa. Code § 46.881 (relating to storage areas and receptacles for refuse, recyclables and returnables: materials, design, construction and installation).

### **§ 10-1209.22 Functionality of various physical facilities of a food facility.**

(A) *Light bulbs: protective shielding.*

there  
single service  
and single-use articles.

(1) Except as specified in paragraph (2), light bulbs in use in a food facility shall be shielded, coated or otherwise shatter-resistant in areas where is exposed food; clean equipment, utensils and linens; or unwrapped

following  
are accurate:

(2) Shielded, coated or otherwise shatter-resistant bulbs need not be used in areas used only for storing food in unopened packages, if both of the

(i) The integrity of the packages cannot be affected by broken glass falling onto them.

broken  
bulbs before the packages are opened.

(ii) The packages are capable of being cleaned of debris from

of the  
bulb is exposed.

(3) An infrared or other heat lamp shall be protected against breakage by a shield surrounding and extending beyond the bulb so that only the face

(B) *Heating, ventilating and air conditioning system vents.* Heating, ventilating and air conditioning systems in a food facility shall be designed and installed

so that make-up air intake and exhaust vents do not cause contamination of food, food-contact surfaces, equipment or utensils.

(C) *Design and installation of insect control devices.*

(1) Insect control devices that are used in a food facility to electrocute or stun flying insects shall be designed to retain the insect within the device.

(2) Insect control devices shall be installed so that they meet the following requirements:

(i) The devices are not located over a food preparation area.

(ii) Dead insects and insect fragments are prevented from being impelled onto or falling on exposed food; clean equipment, utensils and linens; and unwrapped single-service and single-use articles.

(D) *Toilet rooms shall be enclosed.* A toilet room located on the premises of a food facility shall be completely enclosed and provided with a tight-fitting and self-closing door. This requirement does not apply to a toilet room that is located outside a food facility and does not open directly into the food facility (such as a toilet room that is provided by the management of a shopping mall).

(E) *Outer openings shall be protected.*

(1) Except as specified in paragraphs (2)—(5), outer openings of a food facility shall be protected against the entry of insects and rodents by use of the following:

(i) Filling or closing holes and other gaps along floors, walls and ceilings.

(ii) Having closed, tight-fitting windows.

(iii) Having solid, self-closing, tight-fitting doors.

(2) Paragraph (1) does not apply if a food facility opens into a larger structure, such as a mall, airport or office building, or into an attached structure, such as a porch, and the outer openings from the larger or attached structure are protected against the entry of insects and rodents.

(3) Exterior doors used as exits need not be self-closing if they are all of the following:

(i) Solid and tight-fitting.

so  
other  
they are not used for entrance or exit from the building for purposes than the designated emergency exit use.

located,  
is  
openings  
(4) Except as specified in paragraphs (2) and (5), if the windows or doors of a food facility, or of a larger structure within which a food facility is are kept open for ventilation or other purposes or a temporary food facility not provided with windows and doors as specified in paragraph (1), the shall be protected against the entry of insects and rodents by one or more of the following:

(i) 16 mesh to 25.4mm (16 mesh to 1 inch) screens.

insects.  
(ii) Properly designed and installed air curtains to control flying

(iii) Other effective means.

condition.  
(5) Paragraph (4) does not apply if insects, rodents and other animals are absent due to the location of the facility, the weather or other limiting

(F) *Exterior walls and roofs: protective barrier.* Perimeter walls and roofs of a food facility shall effectively protect the facility from the weather and the entry of insects, rodents and other animals.

that  
(G) *Outdoor food vending areas, overhead protection.* If located outside, a machine used to vend food shall be provided with overhead protection except machines vending canned beverages need not meet this requirement.

(H) *Outdoor servicing areas: overhead protection.* Servicing areas of a food facility shall be provided with overhead protection. However, if the area is used only for the loading of water or the discharge of sewage and other liquid waste, through the use of a closed system of hoses, the area need not be provided with overhead protection.

(i) *Outdoor walking and driving surfaces: graded to drain.* Exterior walking and driving surfaces of a food facility shall be graded to drain.

(J) *Outdoor refuse areas: curbed and graded to drain.* Outdoor refuse areas shall be constructed in accordance with Chapter 3 of the Pennsylvania Construction Code Act (35 P. S. §§ 7210.301—7210.304) and shall be curbed and graded to drain to collect and dispose of liquid waste that results from the refuse and from cleaning the area and waste receptacles.

(K) *Living or sleeping quarters, use prohibition.* A room used as living or sleeping quarters, or an area directly opening into a room used as living or sleeping quarters, may not be used for conducting food facility operations.

(L) *Living or sleeping quarters: separation.* Living or sleeping quarters located on the premises of a food facility such as those provided for lodging registration clerks or resident managers shall be separated from rooms and areas used for food facility operations by complete partitioning and solid self-closing doors.

### **Cross References**

This section cited in 7 Pa. Code § 46.102 (relating to duties of the person in charge); 7 Pa. Code

§ 46.881 (relating to storage areas and receptacles for refuse, recyclables and returnables: materials, design, construction and installation); and 7 Pa. Code § 46.981 (relating to premises, structures, attachments and fixtures: methods).

## **NUMBERS AND CAPACITIES**

### **§ 10-1209.41 Handwashing facilities: numbers and capacities.**

(A) *Minimum number.* Handwashing facilities shall be provided in a food facility as specified in § 10-1208.23(A) (relating to numbers and capacities of plumbing facilities).

(B) *Availability of handwashing cleanser.* Each handwashing sink or group of two adjacent sinks shall be provided with a supply of hand cleaning liquid, powder or bar soap.

(C) *Availability of hand drying.* Each handwashing sink or group of adjacent sinks shall be provided with one or more of the following:

(1) Individual, disposable towels.

(2) A continuous towel system that supplies the user with a clean towel.

(3) A heated-air hand drying device.

(D) *Limitations on use of handwashing aids and devices.* A sink used for food preparation or utensil washing, or a utility sink or curbed cleaning facility used for the disposal of mop water or similar wastes, may not be provided with the handwashing aids and devices required for a handwashing sink as specified in subsections (B) and (C) and § 10-1208.82(A)(3) (relating to storage areas and receptacles for refuse, recyclables and returnables: numbers and capacities).

(E) *Handwashing signage.* A sign or poster that notifies food employees to wash their hands shall be provided at all handwashing sinks used by food employees and shall be clearly visible to food employees.

(F) *Disposable towels, waste receptacle.* A handwashing sink or group of adjacent sinks that is provided with disposable towels shall be provided with a waste receptacle as specified in § 10-1208.82(A)(3).

### **Cross References**

This section cited in 7 Pa. Code § 46.131 (relating to cleanliness of hands and exposed portions of arms).

### **§ 10-1209.42 Toilets and urinals: numbers and capacities.**

(A) *Minimum number.* Toilets and urinals shall be provided in a food facility as specified in § 10-1208.23(B) (relating to numbers and capacities of plumbing facilities).

(B) *Availability of toilet tissue.* A supply of toilet tissue shall be available at each toilet.

### **§ 10-1209.43. Lighting: intensity.**

The light intensity in a food facility shall be all of the following:

(1) At least 110 lux (10 foot candles) at a distance of 75 cm (30 inches) above the floor, in walk-in refrigeration units and dry food storage areas and in other areas and rooms during periods of cleaning.

(2) At least 220 lux (20 foot candles) at each of the following locations:

(i) At a surface where food is provided for consumer self-service such

as buffets and salad bars or where fresh produce or packaged foods are sold or offered for consumption.

(ii) Inside equipment such as reach-in and under-counter refrigerators.

(iii) At a distance of 75 cm (30 inches) above the floor in areas used for handwashing, warewashing and equipment and utensil storage, and in toilet rooms.

(3) At least 540 lux (50 foot candles) at a surface where a food employee is working with food or working with utensils or equipment such as knives, slicers, grinders or saws where employee safety is a factor.

**§ 10-1209.44. Mechanical ventilation as needed.**

If necessary to keep rooms free of excessive heat, steam, condensation, vapors, obnoxious odors, smoke and fumes in a food facility, mechanical ventilation of sufficient capacity shall be provided.

**§ 10-1209.45. Requirement and designation of dressing areas and storage areas.**

(A) *Designation.* Dressing rooms or dressing areas shall be designated in a food facility if employees routinely change their clothes in that facility.

(B) *Storage of employees' clothing and possessions.* Lockers or other suitable facilities shall be provided for the orderly storage of employees' clothing and other possessions.

**Cross References**

This section is cited in 7 Pa. Code § 46.1029 (relating to other personal care items: storage).

**§ 10-1209.46. Utility sinks.**

A utility sink or curbed cleaning facility shall be provided as specified in § 10-1208.23(C) (relating to numbers and capacities of plumbing facilities).

**LOCATION AND PLACEMENT**

**§ 10-1209.61. Handwashing facilities: located for convenience.**

Handwashing facilities in a food facility shall be conveniently located as specified in § 10-1208.24(A) (relating to location and placement of plumbing facilities).

**§ 10-1209.62. Toilet rooms: located for convenience.**

Toilet rooms in a food facility shall be conveniently located and accessible to employees during all hours of operation.

**§ 10-1209.63. Employee accommodations: located to prevent contamination.**

(A) *Designated eating, drinking and smoking areas.* Areas designated for employees to eat, drink and use tobacco shall be located so that food, equipment, linens and single-service and single-use articles are protected from contamination.

(B) *Lockers and other facilities.* Lockers or other suitable facilities shall be located in a designated room or area where contamination of food, equipment, utensils, linens and single-service and single-use articles cannot occur.

**§ 10-1209.64. Distressed merchandise: segregated.**

Products that are held by the food facility operator for credit, redemption or return to the distributor such as damaged, spoiled or recalled products, shall be segregated and held in designated areas that are separate from food, equipment, utensils, linens and single-service and single-use articles.

**Cross References**

This section cited in 7 Pa. Code § 46.281 (relating to preventing contamination of packaged and unpackaged food: separation, packaging and segregation).

**§ 10-1209.65 Refuse, recyclables and returnables: receptacles, waste handling units and designated storage areas.**

Units, receptacles and areas designated for storage of refuse and recyclable and returnable containers shall be located as specified in § 46.883 (relating to location of storage areas, redeeming machines, receptacles and waste handling units).

**MAINTENANCE AND OPERATION**

**§ 10-1209.81 Premises, structures, attachments and fixtures: methods.**

(A) *General requirement.* The physical facilities of a food facility shall be maintained in good repair.

(B) *Cleaning: frequency and limitations.*

(1) The physical facilities of a food facility shall be cleaned as often as necessary to keep them clean.

(2) Cleaning shall be done during periods when the least amount of food is exposed such as after closing. This requirement does not apply to cleaning that is necessary due to a spill or other accident.



(C) *Cleaning floors by dustless methods.*

cleaning  
treated (1) Except as specified in paragraph (2), only dustless methods of  
shall be used (such as wet cleaning, vacuum cleaning, mopping with  
dust mops or sweeping using a broom and dust-arresting compounds).

(2) Spills or drippage on floors that occur between normal floor cleaning  
times shall be cleaned as follows:

(i) Without the use of dust-arresting compounds.

earth (ii) In the case of liquid spills or drippage, with the use of a small  
amount of absorbent compound such as sawdust or diatomaceous  
applied immediately before spot cleaning.

(D) *Cleaning ventilation systems without causing contamination, health hazard  
or nuisance.*

(1) Intake and exhaust air ducts shall be cleaned and filters changed so  
they are not a source of contamination by dust, dirt and other materials.

(2) If vented to the outside, ventilation systems may not create a public  
health hazard or nuisance or unlawful discharge.

(E) *Preventing contamination by cleaning maintenance tools.* Food preparation  
sinks, handwashing sinks and warewashing equipment may not be used for  
the cleaning of maintenance tools, the preparation or holding of maintenance  
materials or the disposal of mop water and similar liquid wastes.

(F) *Drying mops.* After use, mops shall be placed in a position that allows  
them to air-dry without soiling walls, equipment or supplies.

subsection (G) *Absorbent materials on floors: use limitation.* Except as specified in

(c)(2), sawdust, wood shavings, granular salt, baked clay, diatomaceous  
earth or similar materials may not be used on floors.

(relating (H) *Maintaining and using handwashing facilities.* Handwashing facilities  
shall be kept clean, and maintained and used as specified in § 10-1208.25(A)  
to operation and maintenance of plumbing facilities).

(I) *Closing toilet room doors.* Toilet room doors as specified in § 10-1209.22(D)

(relating to functionality of various physical facilities of a food facility) shall be kept closed except during cleaning and maintenance operations.

(J) *Using dressing rooms and lockers.* Dressing rooms shall be used by employees if the employees regularly change their clothes in the facility. Lockers or other suitable facilities shall be used for the orderly storage of employee clothing and other possessions.

(K) *Controlling pests.* The presence of insects, rodents and other pests shall be controlled to minimize their presence on the premises by all of the following:

- (1) Routinely inspecting incoming shipments of food and supplies.
- (2) Routinely inspecting the premises for evidence of pests.
- (3) Using methods, if pests are found, such as trapping devices or other means of pest control as specified in § 10-1210.26(B) and (C) (relating to pesticides).
- (4) Eliminating harborage conditions.

(L) *Removing dead or trapped birds, insects, rodents and other pests.* Dead or trapped birds, insects, rodents and other pests shall be removed from control devices and the premises at a frequency that prevents their accumulation, decomposition or the attraction of pests.

(M) *Storing maintenance tools.* Maintenance tools (such as brooms, mops, vacuum cleaners and similar items) shall be stored so that they do not contaminate food, equipment, utensils, linens and single-service and single-use articles, and in an orderly manner that facilitates cleaning the area used for storing the maintenance tools.

(N) *Removing unnecessary items and litter from the premises.* The premises of a food facility shall be free of items that are unnecessary to the operation or maintenance of the facility, such as equipment that is nonfunctional or no longer used, and litter.

### **Cross References**

This section cited in 7 )a. Code § 46.884 (relating to operation and maintenance of storage areas, redeeming machines, receptacles and waste handling units).

### **§ 10-1209.82 Limitations on animals.**

(A) *General.* Live animals may not be allowed on the premises of a food facility, unless under an exception specified in subsection (b).

(B) *Exceptions.*

(1) Live animals may be allowed only in the following situations, and if the contamination of food; clean equipment, utensils and linens; and unwrapped single-service and single-use articles cannot result:

- (i) Edible fish or decorative fish in aquariums, shellfish or crustacea on ice or under refrigeration, and shellfish and crustacea in display tank systems.
- (ii) Patrol dogs accompanying police or security officers in offices and dining, sales and storage areas, and sentry dogs running loose in outside fenced areas.
- (iii) Service animals that are controlled by the disabled employee or person, in areas that are not used for food preparation and that are usually open for customers (such as dining and sales areas), if a health or safety hazard will not result from the presence or activities of the service animal.
- (iv) Pets in the common dining areas of institutional care facilities (such as nursing homes, assisted living facilities, group homes or residential care facilities) at times other than during meals if all of the following are accurate:
  - (a) Effective partitioning and self-closing doors separate the common dining areas from food storage or food preparation areas.
  - (b) Condiments, equipment and utensils are stored in enclosed cabinets or removed from the common dining areas when pets are present.
  - (c) Dining areas including tables, countertops and similar surfaces are effectively cleaned before the next meal service.

(v) Caged animals or animals that are similarly restrained in areas that are not used for food preparation, storage, sales, display or dining, such as in a variety store that sells pets or a tourist park that displays animals.

(2) Live or dead fish bait may be stored if contamination of food, clean equipment, utensils and linens; and unwrapped single-service and single-use articles cannot result.

## **POISONOUS OR TOXIC MATERIALS LABELING AND IDENTIFICATION**

### **LABELING AND IDENTIFICATION**

#### **§ 10-1210.01 Poisonous or toxic substances: original containers to display identifying information.**

Containers of poisonous or toxic materials and personal care items shall bear a legible manufacturer's label.

#### **Cross References**

This section cited in 7 Pa. Code § 46.1027 (relating to medicines); and 7 Pa. Code § 46.1028 (relating to first aid supplies: storage).

#### **§ 10-1210.02 Poisonous or toxic substances: working containers labeled with common name.**

Working containers used for storing poisonous or toxic materials such as cleaners and sanitizers taken from bulk supplies shall be clearly and individually identified with the common name of the material.

### **OPERATIONAL SUPPLIES AND APPLICATIONS**

#### **§ 10-1210.21 Poisonous or toxic substances: storage.**

Poisonous or toxic materials shall be stored so they cannot contaminate food, equipment, utensils, linens and single-service and single-use articles by taking both of the following measures:

(1) Separating the poisonous or toxic materials by spacing or partitioning.

(2) Locating the poisonous or toxic materials in an area that is not above food, equipment, utensils, linens and single-service or single-use articles. This paragraph does not apply to equipment and utensil cleaners and sanitizers that are stored in warewashing areas for availability and convenience if the materials are stored to prevent contamination of food, equipment, utensils, linens and single-service and single-use articles.

**§ 10-1210.22. Poisonous or toxic substances: limitations on presence and use.**

(A) *Limitation.* Only those poisonous or toxic materials that are required for the operation and maintenance of a food facility, such as for the cleaning and sanitizing of equipment and utensils and the control of insects and rodents, shall be allowed in a food facility. This section does not apply to packaged poisonous or toxic materials that are for retail sale.

(B) *Conditions of use.* Poisonous or toxic materials shall be used in a lawful manner according to the following:

(1) Manufacturer's use directions included in labeling, and, for a pesticide, manufacturer's label instructions that state that use is allowed in a food facility.

(2) The conditions of certification, if certification is required, for use of the pest control materials.

(3) Additional conditions that may be approved by the Department.

(C) *Conditions of application.* Poisonous or toxic materials shall be applied so that the following are accurate:

(1) A hazard to employees or other persons is not constituted.

(2) Contamination (including toxic residues due to drip, drain, fog, splash or spray on food, equipment, utensils, linens and single-service and articles) is prevented, and for a restricted-use pesticide, this is achieved by doing all of the following:

(i) Removing the items.

(ii) Covering the items with impermeable covers, or taking other appropriate preventive actions.

(iii) Cleaning and sanitizing equipment and utensils after the application.

(D) *Applicator.* A restricted use pesticide shall be applied only by an applicator certified in accordance with the Pennsylvania Pesticide Control Act of 1973 (3 P. S. §§ 111.21—111.61) or a person under the direct supervision of a certified applicator.

## Cross References

This section cited in 7 Pa. Code § 46.1026 (relating to pesticides).

### **§ 10-1210.23 Prohibition of use of poisonous or toxic material containers to store food.**

A container previously used to store poisonous or toxic materials may not be used to store, transport or dispense food.

### **§ 10-1210.24 Chemicals: use criteria.**

(A) *Sanitizers*. Chemical sanitizers and other chemical antimicrobials applied to food-contact surfaces shall meet the requirements specified in 21 CFR 178.1010 (relating to sanitizing solutions).

(B) *Chemicals for washing fruits and vegetables*. Chemicals used to wash or peel raw, whole fruits and vegetables shall meet the requirements specified in 21 CFR 173.315 (relating to chemicals used in washing or to assist in the peeling of fruits and vegetables).

(C) *Boiler water additives*. Chemicals used as boiler water additives shall meet the requirements specified in 21 CFR 173.310 (relating to boiler water additives).

(D) *Drying agents*.

(1) Drying agents used in conjunction with sanitization shall contain only components that are listed as one or more of the following:

- |           |                                                                                          |
|-----------|------------------------------------------------------------------------------------------|
| CFR       | (i) Generally recognized as safe for use in food as specified in 21                      |
| CFR 184   | 182 (relating to substances generally recognized as safe) or 21                          |
| as        | (relating to direct food substances affirmed as generally recognized safe).              |
| in 21     | (ii) Generally recognized as safe for the intended use as specified                      |
| specified | CFR 186 (relating to indirect food substances affirmed as generally recognized as safe). |
| drying    | (iii) Approved for use as a drying agent under a prior sanction                          |
|           | in 21 CFR 181 (relating to prior-sanctioned food ingredients).                           |
|           | (iv) Specifically regulated as an indirect food additive for use as a                    |

agent as specified in 21 CFR Parts 175—178.

regulation (v) Approved for use as a drying agent under the threshold of  
regulation process established by 21 CFR 170.39 (relating to threshold of  
for substances used in food-contact articles).

paragraph (2) When sanitization is with chemicals, the approval required in  
paragraph (1)(iii) or (v), or the regulation as an indirect food additive required in  
(1)(iv), shall be specifically for use with chemical sanitizing solutions.

### **Cross References**

This section cited in 7 Pa. Code § 46.285 (relating to washing raw fruits and vegetables).

### **§ 10-1210.25 Lubricants that have incidental contact with food: criteria.**

Lubricants shall meet the requirements specified in 21 CFR 178.3570 (relating to lubricants with incidental food contact) if they are used on food-contact surfaces, on bearings and gears located on or within food-contact surfaces, or on bearings and gears that are located so that lubricants may leak, drip or be forced into food or onto food-contact surfaces.

### **§ 10-1210.26 Pesticides.**

(A) *Restricted use pesticides: criteria.* Restricted use pesticides specified in §10-1210.22(D) (relating to poisonous or toxic substances: limitations on presence and use) shall meet the requirements of a restricted use pesticide as specified in § 128.2 (relating to definitions). This section requires restricted use pesticides be one of the following:

Insecticide, (1) Classified for restricted use under section 3(d) of the Federal Fungicide and Rodenticide Act of 1947 (7 U.S.C.A. § 136a(d)).

section (2) A pesticide designated by the Secretary for restricted use under 7(b)(6) of the Pennsylvania Pesticide Control Act of 1973 (3 P. S. § 111.27(b)(6)).

(B) *Rodent bait stations.* Rodent bait shall be contained in a covered, tamperresistant bait station.

(C) *Tracking powders: pesticides and nontoxics.* A tracking powder pesticide may not be used in a food facility. A nontoxic tracking powder (such as talcum or flour) may be used in a food facility if it will not contaminate food, equipment, utensils, linens and single-service and single-use articles.

### **Cross References**

This section cited in 7 Pa. Code § 46.981 (relating to premises, structures, attachments and fixtures: methods).

### **§ 10-1210.27 Medicines.**

(A) *Limitation and storage.*

that (1) Only those medicines that are necessary for the health of employees shall be allowed in a food facility. This section does not apply to medicines that are stored or displayed for retail sale.

substances: (2) Medicines that are in a food facility for the employees' use shall be labeled as specified in § 10-1210.01 (relating to poisonous or toxic prevent original containers to display identifying information) and located to and the contamination of food, equipment, utensils, linens and single-service single-use articles.

(B) *Refrigerated medicines: storage.* Medicines belonging to employees or to children in a day care center that require refrigeration and are stored in a food refrigerator shall be in compliance with the following:

(1) Stored in a package or container and kept inside a covered, leakproof container that is identified as a container for the storage of medicines.

(2) Located so they are inaccessible to children.

### **Cross References**

This section cited in 7 Pa. Code § 46.1029 (relating to other personal care items: storage).

### **§ 10-1210.28. First aid supplies: storage.**

First aid supplies that are in a food facility for the employees' use shall be both of the following:

(1) Labeled as specified in § 46.1001 (relating to poisonous or toxic substances:



original containers to display identifying information).

(2) Stored in a kit or a container that is located to prevent the contamination of food, equipment, utensils, linens and single-service and single-use articles.

### **Cross References**

This section cited in 7 Pa. Code § 46.1029 (relating to other personal care items: storage).

### **§10-1210.29. Other personal care items: storage.**

Except as specified in §§ 10-1210.27(B) and 10-1210.28 (relating to medicines; and first aid supplies: storage), employees shall store their personal care items in facilities as specified in § 10-1209.45(B) (relating to requirement and designation of dressing areas and storage areas).

## **STOCK AND RETAIL SALE**

### **§ 10-1210.41. Storage and display: separation of poisonous or toxic materials from food.**

Poisonous or toxic materials shall be stored and displayed for retail sale so they cannot contaminate food, equipment, utensils, linens and single-service and single-use articles by one or both of the following:

- (1) Separating the poisonous or toxic materials by spacing or partitioning.
- (2) Locating the poisonous or toxic materials in an area that is not above food, equipment, utensils, linens and single-service or single-use articles.

## **ADMINISTRATIVE PROCEDURES ACCESS, APPROVALS AND VARIANCES ACCESS, APPROVALS AND VARIANCES**

### **§ 10-1211.01 Access to food facilities.**

After the Department or licensor presents identification, the person in charge shall allow the Department or licensor to determine if the food facility is in compliance with this chapter by allowing access to the facility, allowing inspection and providing information and records specified in this chapter and to which the Department or licensor is entitled under the Public Eating and Drinking Places Law, the Food Act and any other relevant statutory or food regulatory authority during the food facility's hours of operation and other reasonable times if the facility is not open during normal business hours.

### **Cross References**

This section cited in 7 Pa. Code § 46.1144 (relating to conditions of retention: responsibilities of the food facility operator).

## **§ 10-1211.02. Obtaining Department or licensor approval.**

(A) *General.* This section describes the process by which a person may obtain an approval from the Department or a licensor required by any other provision of this chapter.

(B) *Written request.* A person seeking an approval from the Department or a licensor under this chapter shall submit a written request for approval to the entity from which approval is sought. If approval is sought from the Department, the written request shall be mailed or delivered to the following address:

Pennsylvania Department of Agriculture  
Bureau of Food Safety and Laboratory Services  
Attn: Chief, Division of Food Safety  
2301 North Cameron Street  
Harrisburg, Pennsylvania 17110-9408

(C) *Contents of request.* The written request for approval described in subsection (B) shall specify the provision of this chapter under which approval is sought, the reason approval is sought and relevant documentation in support of the request.

(D) *Processing a request.* The Department or licensor will, within 30 days of receipt of a written request for approval under this section, mail or otherwise provide the requester with a written grant or denial of the request, or a specific request for additional information. If a written request for additional information is made, the Department or licensor shall have an additional 30 days from the date it receives the additional information within which to mail or otherwise provide the requester with a written grant or denial of the request.

(E) *Standard for approval.* The Department or licensor shall grant approval if it determines the approval would not constitute or cause a violation of the Food Act, the Public Eating and Drinking Places Law or this chapter, and that no health hazard would result from the approval.

## **§ 10-1211.03. Variances.**

(A) *Modifications and waivers.* The Department may grant a variance by modifying or waiving the requirements of this chapter if—in the opinion of the Department—a health hazard will not result from the variance. If a variance is granted, the Department will retain the information specified in subsection (B) in its records for the food facility.

(B) *Documentation of proposed variance and justification.* Before a variance

from a requirement of this chapter is approved, the information that shall be provided

by the person requesting the variance and retained in the Department's file on the food facility includes the following:

(1) A statement of the proposed variance of the chapter requirement citing relevant chapter section numbers.

(2) An analysis of the rationale for how the potential public health hazards addressed by the relevant chapter sections will be alternatively addressed

by the proposal.

(3) An HACCP plan—if required as specified in § 10-1211.22(A)(1)

(relating to HACCP plans)—that includes the information specified in § 10-1211.22(B) as

it is relevant to the variance requested.

(C) *Conformance with approved procedures.* If the Department grants a variance as specified in subsection (A), or an HACCP plan is otherwise required as specified in § 10-1211.22(A), the food facility operator shall do the following:

(1) Comply with the HACCP plans and procedures that are submitted as specified in § 10-1211.22(B) and approved as a basis for the modification

or waiver.

(2) Maintain and provide to the Department, upon request, records specified in § 10-1211.22(B)(4) and (5) that demonstrate that the following are

routinely employed:

(i) Procedures for monitoring critical control points.

(ii) Monitoring of the critical control points.

(iii) Verification of the effectiveness of an operation or process.

(iv) Necessary corrective actions if there is failure at a critical control point.

## Cross References

This section cited in 7 Pa. Code § 46.3 (relating to definitions); 7 Pa. Code § 46.361 (relating to cooking raw animal-derived foods); 7 Pa. Code § 46.401 (relating to variance requirement for specialized processing methods); 7 Pa. Code § 46.589 (relating to molluscan shellfish tanks); 7 Pa. Code § 46.1124 (relating to preoperational inspection of construction); and 7 Pa. Code § 46.1144 (relating to conditions of retention: responsibilities of the food facility operator).

## **PLAN SUBMISSION AND APPROVAL**

### **§ 10-1211.21. Facility and operating plans.**

(A) *When plans are required.* A food facility licensing applicant or food facility operator shall have plans and specifications reviewed by the Department or licensor and will submit these properly prepared plans and specifications (as described in subsection (B)) to the Department or licensor for review and approval (using the procedure described in § 10-1211.42 (relating to application procedure for appropriate license or registration)) before any of the following:

(1) The construction of a food facility.

(2) The conversion of an existing structure for use as a food facility.

(3) The remodeling of a food facility (including installation and use of any new major food equipment for heating, cooling and hot and cold holding food) or a change of type of food facility or food operation if the Department or licensor determines that plans and specifications are necessary to ensure compliance with this chapter.

(4) A change of ownership of a food facility.

(B) *Contents of the plans and specifications.* The plans and specifications for a food facility shall include (as required by the Department or licensor based on the type of operation, type of food preparation and foods prepared) the following information to demonstrate conformance with this chapter:

(1) Intended menu and consumer advisory intentions, if a consumer advisory is required under § 10-1204.23 (relating to consumer advisory required with respect to animal-derived foods that are raw, undercooked or not otherwise processed to eliminate pathogens).

(2) Anticipated volume of food to be stored, prepared and sold or served.

(3) Proposed layout, mechanical schematics, construction materials and finish schedules.

(4) Proposed equipment types, manufacturers, model numbers, locations, dimensions, performance capacities and installation specifications.

disposal. (5) Source of water supply, means of sewage disposal and refuse

(6) An HACCP plan, if required under § 10-1211.22 (relating to HACCP plans).

modification (7) Other information that may be required by the Department or licensor for the proper review of the proposed construction, conversion or of a food facility, and requested by the Department or licensor in writing.

### **Cross References**

This section cited in 7 Pa. Code § 46.1122 (relating to HACCP plans); 7 Pa. Code § 46.1123 (relating to confidentiality of trade secrets); 7 Pa. Code § 46.1143 (relating to issuance); and 7 Pa. Code § 46.1144 (relating to conditions of retention: responsibilities of the food facility operator).

### **§ 10-1211.22. HACCP plans.**

(A) *When a HACCP plan is required.*

subsection (1) Before engaging in an activity that requires a HACCP plan, a food facility applicant or food facility operator shall submit to the Department or licensor for approval a properly prepared HACCP plan as specified in

(B) and the relevant provisions of this chapter if any of the following occurs:

(i) Submission of a HACCP plan is required according to applicable Federal or State laws.

(ii) A variance is required as specified in § 10-1202.50(B)(2)(ii), § 10-1203.61(D)(2), § 10-1204.01 or § 10-1205.89(B).

or (iii) The Department or licensor determines that a food preparation

processing method requires a variance based on a plan submittal in § 10-1211.21(B) (relating to facility and operating inspectional finding or a variance request).

(2) A food facility applicant or food facility operator shall have a properly prepared HACCP plan as specified in § 46.402 (relating to reduced oxygen packaging).

(B) *Contents of a HACCP plan.* For a food facility that is required in subsection (A) to have a HACCP plan, the plan and specifications shall indicate the following:

(1) A categorization of the types of potentially hazardous foods that are specified in the menu such as soups and sauces, salads, and bulk, solid foods such as meat roasts, or of other foods that are specified by the Department or licensor.

(2) A flow diagram by specific food or category type identifying critical control points and providing information on the following:

(i) Ingredients, materials and equipment used in the preparation of that food.

(ii) Formulations or recipes that delineate methods and procedural control measures that address the food safety concerns involved.

(3) Food employee and supervisory training plan that addresses the food safety issues of concern.

(4) A statement of standard operating procedures for the plan under consideration including clearly identifying the following:

(i) Each critical control point.

(ii) The critical limits for each critical control point.

(iii) The method and frequency for monitoring and controlling each critical control point by the food employee designated by the person in charge.

(iv) The method and frequency for the person in charge to routinely verify that the food employee is following standard operating procedures and monitoring critical control points.

(v) Action to be taken by the person in charge if the critical limits for each critical control point are not met.

(vi) Records to be maintained by the person in charge to demonstrate that the HACCP plan is properly operated and managed.

(5) Additional scientific data or other information, as required by the Department or licensor, supporting the determination that food safety is not compromised by the proposal.

### **Cross References**

This section cited in 7 Pa. Code § 46.366 (relating to treating juice); 7 Pa. Code § 46.402 (relating to reduced oxygen packaging); 7 Pa. Code § 46.461 (relating to additional safeguards for a food facility that serves a highly susceptible population); 7 Pa. Code § 46.1103 (relating to variances); 7 Pa. Code § 46.1121 (relating to facility and operating plans); 7 Pa. Code § 46.1123 (relating to confidentiality of trade secrets); and 7 Pa. Code § 46.1144 (relating to conditions of retention: responsibilities of the food facility operator).

### **§ 10-1211.23 Confidentiality of trade secrets.**

The Department will treat as confidential information that meets the criteria specified in law for a trade secret and is contained on inspection report forms and in the plans and specifications submitted as specified in §§ 10-1211.21(B) and 10-1211.22(B) (relating to facility and operating plans; and HACCP plans).

### **§ 10-1211.24 Preoperational inspection of construction.**

The Department or licensor will conduct one or more preoperational inspections to verify that the food facility is constructed and equipped in accordance with the approved plans and approved modifications of those plans, and variances granted under § 10-1211.03 (relating to variances). The Department or licensor will also verify the food facility is otherwise in compliance with this chapter, the Food Act and the Public Eating and Drinking Places Law.

### **Cross References**

This section cited in 7 Pa. Code § 46.1143 (relating to issuance).

## **REQUIREMENTS FOR OPERATION**

### **§ 10-1211.41 Requirement: license or registration.**

(A) *General requirement.* A person may not operate a food facility without a valid registration issued by the Department, or license issued by the Department or licensor, unless otherwise provided in subsection (B).

(B) *Exceptions.*

or  
for  
farm-  
for  
20.14).

(1) A building, structure or place owned, leased or otherwise in possession of a person or municipal corporation or public or private organization, used intended to be used by two or more farmers or an association of farmers the purpose of selling food directly to consumers—otherwise known as a er’s market—shall be considered to be a single retail food establishment purposes of registration under section 14 of the Food Act (31 P. S. § 20.14).

(2) The following food establishments are exempt from registration requirements under section 14 of the Food Act:

processors or

(i) Vehicles used primarily for the transportation of a consumer commodity in bulk or quantity to manufacturers, packers, wholesale or retail distributors.

sold  
located.

(ii) A food establishment in which at least 50% of the commodities were produced on the farm on which the food establishment is located.

(iii) A food establishment in which food or beverages are sold only through a vending machine.

(iv) A food establishment in which only prepackaged, nonpotentially hazardous food or beverages are sold.

**§ 10-1211.42. Application procedure for appropriate license or registration.**

Prior to the opening of a food facility, the operator shall contact the Department or licensor to obtain the appropriate application form for the required license or registration. The Department or licensor will supply the applicant the appropriate form, based upon the type of food facility involved. If the food facility is a public eating and drinking place, the applicant shall obtain a license. If the food facility is a retail food establishment, the applicant must obtain a registration. A single location (such as a grocery store that also serves hot ready-to-eat foods) might require both a license and a registration.



## Cross References

This section cited in 7 Pa. Code § 46.1121 (relating to facility and operating plans); and 7 Pa. Code § 46.1143 (relating to issuance).

### § 10-1211.43. Issuance.

(A) *New, converted or remodeled food facilities.* For food facilities that are required to submit plans as specified in § 10-1211.21(A) (relating to facility and operating plans), the Department will issue a registration, or the Department or licensor will issue a license to the applicant after the following occur:

- (1) The required plans, specifications and information are reviewed and approved.
- (2) A preoperational inspection, as described in § 10-1211.24 (relating to preoperational inspection of construction) shows that the facility is built or remodeled in accordance with the approved plans and specifications and that the facility is in compliance with this chapter.
- (3) A properly completed application is submitted.
- (4) The required fee is submitted.

(B) *License or registration renewal.* The food facility operator of an existing food facility shall submit an application, the required fee and be in compliance with this chapter prior to issuance by the Department of a renewed registration or license, or the issuance of a renewed license by the Department or a licensor.

(C) *Change of ownership.* Licenses and registrations are nontransferable. New owners shall apply to the Department or licensor in accordance with § 10-1211.42 (relating to application procedure for appropriate license or registration).

### § 10-1211.44 Conditions of retention: responsibilities of the food facility operator.

To retain a license or registration issued by the Department or licensor under this chapter, a food facility operator shall do the following:

- (1) Post the license or registration in a location in the food facility that is conspicuous to consumers and the Department or licensor.
- (2) Comply with this chapter—including the conditions of a granted variance as specified in § 10-1211.03(C) (relating to variances)—and approved plans as specified in § 10-1211.21(B) (relating to facility and operating plans).

(3) If a food facility is required in § 10-1211.22(A) (relating to HACCP plans) to operate under a HACCP plan, comply with the plan as specified in § 10-1211.03(C).

(4) Immediately contact the Department or licensor to report an illness of a food employee as specified in § 10-1201.11(B) (relating to duty to report disease or medical condition).

(5) Immediately discontinue operations and notify the Department or licensor if an imminent health hazard may exist because of an emergency such as a fire, flood, extended interruption of electrical or water service, sewage backup, misuse of poisonous or toxic materials, onset of an apparent foodborne illness outbreak, gross unsanitary occurrence or condition or other circumstance that may endanger public health. A food facility operator need not discontinue operations in an area of a facility that is unaffected by the imminent health hazard.

(6) Not resume operations discontinued in accordance with paragraph (5) or otherwise according to the Public Eating and Drinking Places Law or the Food Act until approval is obtained from the Department or licensor.

(7) Allow representatives of the Department or licensor access to the food facility as specified in § 10-1211.01 (relating to access to food facilities).

(8) Except as specified in paragraph (9), replace existing facilities and equipment with facilities and equipment that comply with this chapter if either of the following occurs:

(i) The Department or licensor directs the replacement because the facilities and equipment constitute a public health hazard or no longer comply with the criteria upon which the facilities and equipment were accepted.

(ii) The facilities and equipment are replaced in the normal course of operation.

(9) Upgrade or replace refrigeration equipment as specified in § 10-1203.85(A)(3) (relating to potentially hazardous food: hot and cold holding), by December 13, 2008, if the circumstances specified in paragraph (8)(i) and (ii) do not occur first, and unless a variance has been approved as specified in § 10-1211.03.

(10) Comply with directives of the Department or licensor including time frames for corrective actions specified in inspection reports, notices, orders, warnings and other directives issued by the Department or licensor in regard to

the operator's food facility or in response to community emergencies.

(11) Accept notices issued and served by the Department or licensor according to the Public Eating and Drinking Places Law or the Food Act.

## **ADMINISTRATION**

### **§10-1212.01**

All references to 'Department' in the food Code shall be understood to refer to the Codes Enforcement Division Health Department. All references to 'Licensor' shall be understood to refer to the Codes Enforcement Division Health Department.

### **§10-1212.02 Enforcement.**

#### **§10-1212.02.1 Enforcement Authority**

The Food Code shall be enforced by the Health Officer or his/her designee of the City of Reading.

#### **§10-1212.02.2 Inspections.**

Inspections of food selling establishments shall be conducted by the Health Officer or their assign semi annually. Mobile vendors shall have their vehicle inspected before a health license is granted.

#### **§10-1212.02.3 Inspectors.**

There shall be assigned two full-time inspectors as the assign of the Health Officer to perform inspections under the Food Code and uphold the provisions of the Health code.

#### **§10-1212.02.4 Training**

Inspectors assigned by the Health Officer shall be provided with training courses paid for by the City and shall in due course achieve Certification such as offered by the Commonwealth of Pennsylvania or other certifying agencies.

#### **§10-1212.02.5 Equipment.**

All inspectors assigned by the Health Officer shall be provided with a vehicle and thermometer registering range of -20 degrees Fahrenheit to +220 degree Fahrenheit plus all the equipment and tools necessary to properly inspect food selling establishments and mobile food vendors as established by this Food Code and the Health Officer of the City.

### **§10-1212.03 Permit / License**

#### **§10-1212.03.1 Required**

No person shall operate a restaurant or facility as set forth below in the City of Reading without a valid, an non-suspended / unrevoked, permit from the Health Officer. The facilities and restaurants governed by and required to comply with this Ordinance including obtaining of a permit from the City of Reading Health Officer prior to and to continue operation thereof include but are not limited to:

SMALL RESTAURANT  
LARGE RESTAURANT  
ITINERANT RESTAURANT  
ANCILLARY RESTAURANT  
SMALL GROCERY  
LARGE GROCERY  
SUPERMARKET  
ONE ITEM WHOLESALE  
MULTI-ITEM WHOLESALE  
SMALL PROCESSING  
LARGE PROCESSING  
VENDING MACHINE (enclosed)  
VENDING MACHINE (public right of way)  
MOBILE VENDING UNIT  
CATERING/COMMISARY  
BAKERY  
DELICATESSEN

#### **§10-1212.03.2 Application.**

Prior to commencement of operation of a facility governed by this Ordinance, the business owner thereof must apply for a Health License with the Health Officer in the City of Reading Codes Enforcement Division. Such application will be a completed form prepared and provided by the Health Officer or his/her designee, submitted thereto and accompanied by the applicable fee, §10-1212.06.

#### **§10-1212.03.3 Fees.**

There is hereby established a schedule of fees to be paid before a Health License is issued to any food selling establishment or mobile vendor operating in the City.

SMALL RESTAURANT	80.00 Per year
LARGE RESTAURANT	120.00 Per year
ITINERANT RESTAURANT	15.00 Per year
ANCILLARY RESTAURANT	15.00 Per year
SMALL GROCERY	100.00 Per year
LARGE GROCERY	125.00 Per year
SUPERMARKET	200.00 Per year
ONE ITEM WHOLESALE	100.00 Per year
MULTI-ITEM WHOLESALE	175.00 Per year

SMALL PROCESSING	80.00 Per year
LARGE PROCESSING	175.00 Per year
VENDING MACHINE (enclosed)	12.00 Per unit
VENDING MACHINE (public right of way)	20.00 Per unit
MOBILE VENDING UNIT	100.00 Per unit
CATERING/COMMISARY	45.00 Per year
BAKERY	50.00 Per Year
DELICATESSEN	80.00 Per Year

#### **§10-1212.03.4 Inspection.**

An issuance of a license is subject to an inspection of the premises for compliance with the provisions hereof by a City of Reading Health Inspector.

#### **§10-1212.03.5 Issuance.**

Upon completion and passage of an inspection of the subject premises by a City of Reading Health Inspector per the requirements hereof, a Health License for operation of a facility governed hereby shall be issued by the City of Reading Health Officer of his/her designee.

#### **§10-1212.03.6 Posting**

Such permit shall be posted in a conspicuous place.

#### **§10-1212.03.7 Period**

A Health License issued for the operation of a facility, business or premises governed by this Code shall be good for a period of one year commencing on the issuance date.

#### **§10-1212.03.8 Renewal.**

One month prior to expiration of the Health License an application for renewal thereof shall be issued to the business owner on behalf of the Health Officer of the City of Reading. The owner of the business or establishment governed by this Code, shall upon receipt of the application for renewal of a Health Permit complete and submit the application with the appropriate fee to the Health Office. A business owner or establishment shall be compliant with all inspection requirements prior to expiration of the preceding year's permit and renewal of the forthcoming years permit.. Failure of the Health Office to issue an application for renewal of a Health Permit shall not be a defense. The responsibility of timely renewing a Health Permit is on the owner of the business or establishment.

#### **§10-1212.03.9 Failure to pay Health License by due date.**

Double the amount of the license fee shall be collected from any business owner who fails to timely submit an application and pay the fee for renewal of a Health Permit, by

the due date printed on the bill and in no event later than the date of expiration of the prior permit. Doubling of the fee is in addition to the penalties set forth herein.

#### **§10-1212.04 Inspections.**

##### **§10-1212.04.1. Frequency.**

At least twice annually the Health Officer shall inspect every restaurant located within the City, one of which may or may not be an inspection for application or renewal of permit..

##### **§10-1212.04.3. Access to Premises and Records.**

The person operating the restaurant shall upon request of the Health Officer permit access to all parts of the establishment and shall permit copying any or all records of food purchased, including taking food samples for the purpose of testing.

##### **§10-1212.04.4 Administrative Fee**

Failure to be present at any scheduled inspection will be required to pay an administrative fee of \$50.00.

##### **§10-1212.04.5. Inspection Report.**

Upon completion of an inspection, the Health Officer or his/her designee shall prepare a report of his/her findings. One copy of the inspection report shall be given by the Health Officer or his/her designee to the owner or agent of the owner of the restaurant. A copy shall be kept on file on the premises. Another copy of the inspection report shall be filed with the records of the Property Improvement Division.

##### **§10-1212.05.6 Violation Notice.**

If during an inspection, a Health Inspector, designee of the Health Officer, determines that the holder of any Health License has violated any of the provisions of this Food Code, the Inspector shall serve written notice upon such licensee of the violations found. The Violation Notice may be in conjunction with or as part of the Inspection Report provided it meets the criteria set forth herein. The Violation Notice shall:

1. Be in writing.
2. Include a description of the business and real estate sufficient for identification.
3. Include a statement of the violation or violations.
4. Include a correction order allowing a reasonable time to make the repairs and improvements required to bring the business into compliance with the provisions of this code.

5. Inform the business owner of the right to appeal.
6. Include a statement that failure to correct the violation may result in suspension / revocation of the permit causing closure of the business.

#### **§10-1212.05.7 Method of Service.**

Such notice shall be deemed to be properly served if a copy thereof is:

1. By handing it to the business owner or his/her designee person to be served or by posting such notice in a conspicuous place on such business;
2. Sent by or first-class mail addressed to the last known address; or
3. Service upon any executive officer of a corporation shall be a sufficient, but not exclusive method of service upon the corporation. Service upon any partner of a partnership shall be a sufficient, but not exclusive method of service upon the partnership.

#### **§10-1212.05.8 Appeal of Violation Notice.**

An Appeal from a Violation Notice be by the business owner by requesting a hearing in writing within ten (10) days of receipt of the Notice addressed to the Health Officer c/o City of Reading Health Office Rm 1-30 City Hall, 815 Washington Street, Reading, PA 19601. The licensee / permittee may appear in person or with counsel and present evidence regarding the violation and show cause why the violation does not exist. The Health Officer shall receive such information, evidence and testimony as may concern the circumstances of the violation, and the formal rules of evidence shall not apply. Within ten (10) days of conclusion of the Appeal Hearing, the Health Officer shall issue a decision in writing of his/her determination regarding the existence or lack thereof of a violation of this Code.

#### **§10-1212.05.9 Reinspection**

Upon expiration of the time provided to abate / cure / correct the violation as set forth on the Violation Notice, the Health Inspector shall return to the business to perform an inspection to determine if the violation continues to exist.

#### **§10-1212.05.10 Failure to correct violation(s).**

If a business owner fails to correct a violation(s) by the time given on the inspection report / violation notice, and the Health Inspector determines that additional time may be provided to correct such a violation, then business shall request an extension of time to abate / cure / correct violation, by submitting said request on a form prepared and provided by the Health Office along with a fee in the amount of \$10.00 per non corrected violation. Any business owner who fails to correct a violation upon a second time period granted shall follow the aforesaid procedure and pay a fee of \$25.00 for

each violation that remains uncorrected. Any violation that remains uncorrected after the third period granted shall again submit a request for an extension of time to abate / cure / correct the unabated violation and submit a fee in the amount of \$50.00 per violation. If after the third inspection a violation still remains, the Health Officer or his/her designee shall cause the establishment to discontinue the business of selling food to the public. Said requests for extensions of time are subject to the approval of the Health Officer. The above shall not preclude Health Officer or his/her designee from causing the business / establishment to discontinue the selling of food if it determines that the violation is so egregious or that additional time to abate / cure / correct is against the interest of the health and welfare of the public.

## **§10-1212.06 Suspension and Revocation of Permit / License**

### **§10-1212.06.1 Suspension and Revocation of Permit**

If the Health Office or his/her designee shall determine that any of the provisions of the Food Code as amended have been or are being violated, in an egregious or continuing manner, s/he may temporarily suspend or revoke such license. Additionally, failure to renew a Permit as required herein per the provisions set forth in this Code may result in suspension or revocation of said Permit. Such suspension or revocation will result in closure of the business / establishment pending compliance, upon inspection, with this Code.

### **§10-1212.06.2 Hearing.**

- A. Notice. The order suspending and/or revoking a Health Permit shall set forth the date for a hearing requiring the business / establishment owner to appear before the Health Officer to show cause why such license shall not be suspended or revoked. Such notice shall contain a brief statement of the violation, and the time and place of hearing, which shall be held within ten (10) days after the receipt of notice.

B. Procedure. The licensee may appear in person or with counsel and present evidence regarding the violation and show cause why the license shall not be revoked. The Health Officer shall receive such information, evidence and testimony as may concern the circumstances of the violation, and the formal rules of evidence shall not apply.

### **§10-1212.06.3 Determination**

Within five (5) days of completion of the Suspension / Revocation Hearing, the Health Officer shall issue notice in writing to the owner of the business / establishment of his/her determination regarding suspension or revocation of Health Permit.



#### **§10-1212.06.4 Reinstatement of License.**

Reinstatement of suspended or revoked license shall not be effected unless the act, default or omission which was grounds for suspension or revocation shall have been remedied prior to the time of reinstatement.

#### **§10-1212.06 Penalties**

##### **§10-1212.06.1 Violations of the Food Code.**

Any person firm or corporation who shall violate any provision of the Food Code as herein adopted, shall be, upon conviction thereof, sentenced to a fine of not less than \$300.00 for the first violation, \$500.00 for the second violation and not more than \$1000.00 for each violation thereafter plus costs. In default of payment of said fine and costs, the defendant shall be sentenced to a term of imprisonment not to exceed 30 days. Each day that a violation continues shall constitute a separate offense.

##### **§10-1212.06.2 Nonexclusive Remedy.**

The penalty provisions of this Section and the license nonrenewal, suspension and revocation procedures provided in this Chapter shall be independent, nonmutually exclusive separate remedies, all of which shall be available to the City of Reading as may be deemed appropriate for carrying out the purposes of this Chapter. The remedies and procedures provided in this Chapter for violation hereof are not intended to supplant or replace to any degree the remedies and procedures available to the city in the case of a violation of any other City of Reading Code or Codified Ordinances, whether or not such other code or ordinance is referenced in this Chapter and whether or not an ongoing violation of such other code or ordinance is cited as the underlying ground for a finding of a violation of this Part.

##### **§10-1212.07 Other Codes.**

Nothing in this code shall be construed to cancel, modify or set aside any provision of any other Codified ordinance of the *City of Reading*. Compliance with all other Codified Ordinances of the City of Reading to operate a business or establishment governed by this Code shall continue to apply and govern other aspects of operation thereof not governed by this Code including but not limited construction, zoning, and property maintenance.

#### **Authority**

The provisions of this Chapter issued under The Food Act (31 P. S. §§ 20.1—20.18), the Public Eating and Drinking Placed Law (35 P. S. §§ 655.1—655.13); and section 1705(d) of The Administrative Code of 1929 (71 P. S. § 455(d)), unless otherwise noted.

**Source**

The provisions of this Chapter 46 adopted December 12, 2003, effective December 13, 2003, 33

Pa.B. 6137, unless otherwise noted.